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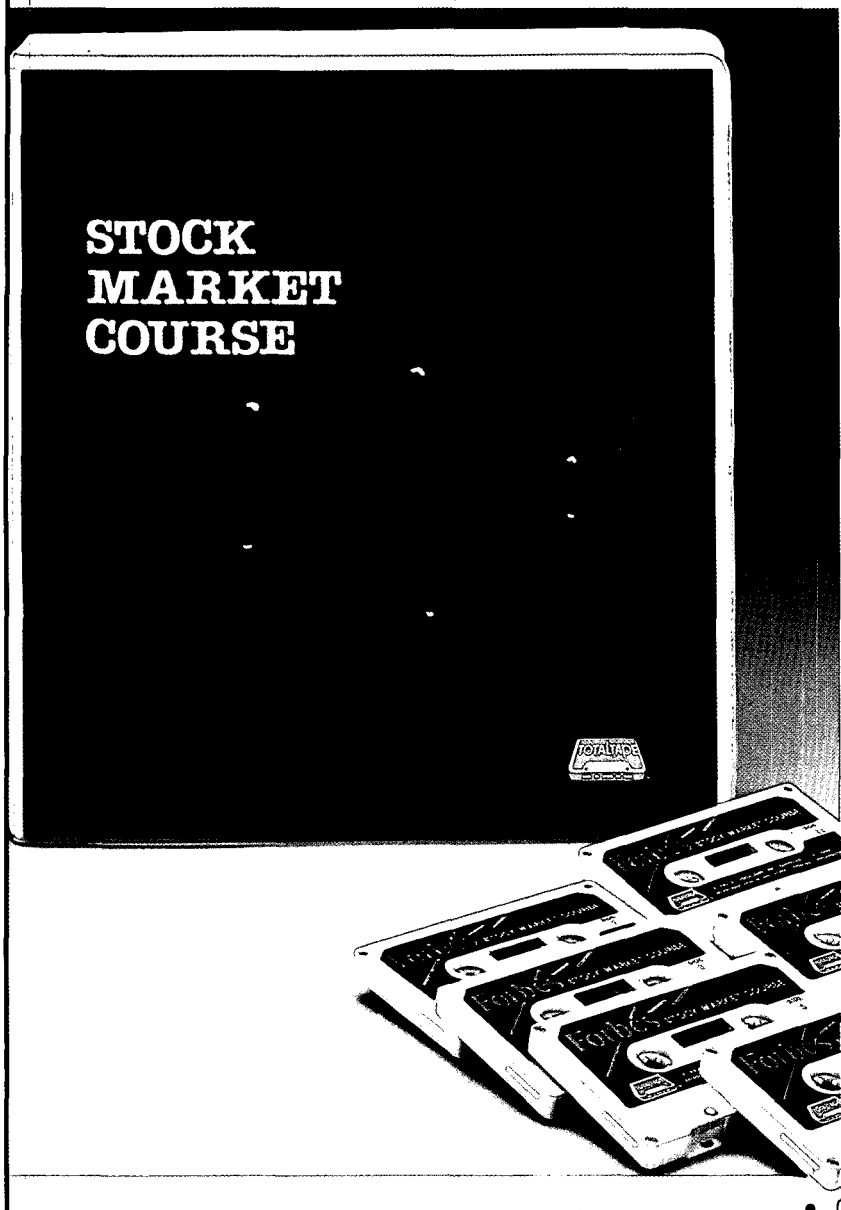

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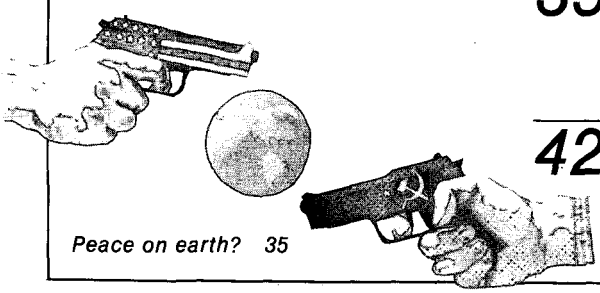

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letters

Recurring Nightmare

Nothing here implies sympathy for Adolf Hitler, whose monstrous regime was no doubt the most evil of the century, second perhaps only to that of his ally in 1939 (and "ours" in 1945), Joseph Stalin. That said, Thomas Sowell's review of William Shirer's book *The Nightmare Years* (May) is unfortunately flawed.

It's a flaw he shares with such distinguished historians as Winston Churchill, but in my view is fatal all the same. It can be expressed as a question: Given (as we all do) that the root cause of World War II was the injustice and humiliation handed down to the German people by the "treaty" of Versailles, how could the Western leaders possibly have diminished the probability of war by resisting Hitler's attempts to correct that injustice?

Suppose, as Sowell urges, they had stood firm with decisive military action in, say, the mid-'30s—and put an end to one of Hitler's adventures. Far from reducing enmity, that would have reaffirmed the injustice of Versailles and driven the German electorate even more firmly to support Hitler—or his successor a few years later. It is amazing that, after 50 years, such a hopelessly illogical course can still be commended!

Certainly, the Western leaders could have avoided World War II, and at almost any time up to September 1939. But the needed action would have been very different: to gather and solemnly denounce and repeal the harsh provisions of the 1919 verdict. That would have meant confessing that World War I had been the fault not of Germany alone but of all the statesmen of the combatant nations. It would have meant handing back to the Third Reich all those territories where the people spoke German and expressed a wish to be part of Germany. It would have meant their swallowing their absurd pride and admitting they had been wrong....

The lesson for today is strong. The root cause of a third world war is that the leaders of two vast powers are locked in global territorial rivalry, each consumed by a mad desire to dominate the world; that neither side is interested in backing off; and that the weapons systems involved have hair triggers that could be tripped by any momentary loss of temper or sanity. This time the price of political pride is not 20 million lives but ten or a hundred times that number. And so far, there is little sign that the lesson of the '30s has even been understood, let alone heeded....

A. J. Davies
Ridgefield, CT

Mr. Sowell replies: There has never been a time in the history of the world when there were no excuses for war, and no amount of concessions will eliminate such excuses. A. J. Davies's claim seems to be that appeasement in the 1930s did not go far enough, soon enough. But we now know from captured Nazi documents that the Nazi demands were often pretexts and were deliberately raised to new levels when the Western democracies caved in, in hopes of peace.

The role of military deterrence—or its lack—seems to disappear into thin air in Davies's argument. Yet we now know that the German generals' plots against Hitler—both before and during World War II—were based on their assessment of the West's capacity to demolish Germany. Virtually every patch of land on this earth has belonged to somebody other than the present occupants—often to a long list of others. The notion that we can avoid war by returning land or people to their "rightful" sovereigns is childish. Why isn't Mexico invading the United States to take back the southwest? Because there are no "root causes"?

Peace requires power because international relations are power relations—not a seminar or a sermon, but a jungle where the weak and irresolute get eaten. If we haven't learned that from history, we haven't learned anything.

American Aid Is Not Israel's Answer

Having just returned from a visit to Israel, I largely agree with Oded Yinon's analysis (Viewpoint, May) and his prescriptions for economic reform. Many informed Israelis and Americans agree on the necessity to free Israel's economy from the fetters of government control, but the critical question is whether or not

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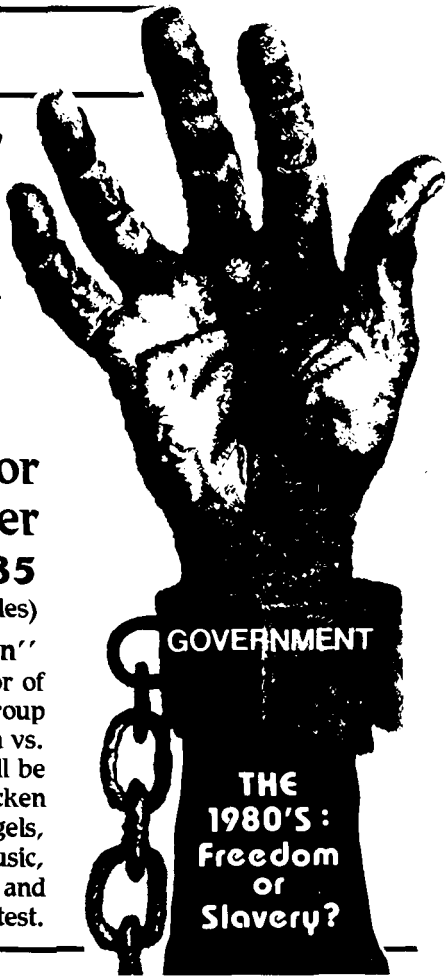

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the Peres government has the political strength and will to adopt and carry out the necessary reforms. If these reforms are not imposed quickly enough to avoid an economic crisis, many fear a political turn to the right with disastrous implications for Israel's future and ultimately for US support.

In these circumstances, US military and economic aid will play a crucial role, as it has in encouraging mistaken Israeli defense and economic policies in the past. Excessive US aid insulated Israeli governments from the full consequences of an unnecessary military build-up that failed to reflect adequately the strategic advantages of Camp David and led to the costly Lebanon adventure. And without US economic aid, Israel would have had to face up to the necessity for economic reform long before now.

The extra $1.5 billion in economic aid the Reagan administration has now proposed—against its better judgment—in the face of congressional pressures will raise total economic aid for Israel in fiscal years 1985 and 1986 to $3.9 billion. Already the $1.2 billion in grant economic aid provided last fall has "disappeared." So will the rest in the absence of drastic economic reforms. The extra aid may buy some time but it may also relieve the pressure of necessity, without which the Israeli government is not likely to act. I could find no one in Israel who believed they could turn their economy around fast enough to avoid coming back for another extra infusion of US aid. Given our own budget deficits, the American taxpayer's—if not the Israeli lobby's—patience may run out.

Harry J. Shaw
Carnegie Endowment for International Peace
Washington, DC

From 1967 to 1980, the writer was chief of the International Securities Affairs Branch of the Bureau of the Budget in the Office of Management and Budget.—Eds.

No Drought About It

I was glad to see your editorial on Ethiopia in the May issue ("Death in Ethiopia: Who's to Blame?"), but you omitted a crucial point: namely, that contributing to any relief program calling its intended recipients "drought victims" is *immoral.*

It is immoral because it sanctions and promotes the shocking, worldwide cover-up of the *actual* cause of the mass suffering and starvation—the government policies and their underlying ideology—thus enabling those policies to kill more masses of people in the future.

If a charity announced that it were soliciting donations for starving victims of political oppression in Ethiopia, I would consider giving. If an organization announced that it were soliciting funds to help freedom-fighters (if any existed) to overthrow the Ethiopian regime in order to establish a free country, I would consider giving.

But for "drought victims"—not a penny.

Charles Seidel
New York, NY

Rearranging Deck Chairs on the Titanic?

The name of your magazine may be REASON, but you lost sight of it in a couple of places in your editorial on Social Security ("We Must Touch the Untouchable," May).

In the sixth paragraph you point out, correctly, that Social Security is not insurance. But...in 1936 it was presented to the American public with a barrage of propaganda saying that it was indeed insurance. Furthermore, the funds taken in were to be held in a fund separate from the US Treasury, to make a reserve from which *your* retirement benefits would be paid when the time came. Anyone with a little critical faculty could see immediately that it was not insurance....

In the next paragraph you say, "Aren't people entitled to the return of an amount equivalent to what they paid in, plus a reasonable rate of return?...So let's look at those numbers." Then, you don't look at those numbers at all; you return to the solecism of comparing total dollars paid in over almost five decades to dollars paid out in one year. On top of which you add injury (not merely insult) to injury by not counting the amounts paid in by the employers, equal to the direct tax on the workers.

The two fairest ways to reduce Social Security outgo are to extend the "normal retirement age" to correspond with the increase in life expectancy since 1936, and to increase the reduction in payments for those who elect "early" retirement. Don't forget that increasing the retirement age produces double benefits to the system: not only does it reduce the total amount that a worker takes out, it also keeps him putting in taxes longer.

I would acquiesce in *another* postponement of the cost-of-living adjustment, provided it is accompanied by a really healthy cut in transfer payments (social programs) so that others besides Social Security recipients help carry the load.

I can see a certain justification for income taxes on one-half of Social Security payments on the grounds that the employers' contributions were not taxed at the source, but only if half of all payments were added into gross income. The present system makes it just another soak-the-"rich" scheme, of which there are already far too many.

H. Orlo Hoadley
Rochester, NY

Mr. Poole replies: Mr. Hoadley is correct in pointing out that employer payments to Social Security should also be counted, since that money is likewise part of the cost of employing someone. But adding in that sum (which doubles the amount paid in) changes only the magnitude of the inequity; instead of receiving 28 times what he has paid in, the recipient now receives 14 times as much. The balance comes from today's workers, who will not receive anything like that when they retire.

I'm glad Mr. Hoadley agrees that this Ponzi scheme must be reformed, but his proposals are merely token steps. Real reform will require replacing the Ponzi scheme with true retirement insurance, as proposed by Peter Ferrara and other analysts.

Hayek on Human Order

Dr. F. A. Hayek's letter (May) provides REASON readers with a wonderful sketch of his major contribution to sociopolitical analysis. It is valuable to have this accessible statement on record so that those not ready to read Hayek's numerous works can have a clear summary of his views by the author himself.

My own conclusions differ somewhat from Hayek's, particularly on the question of how much influence human reflection and deliberation has had on the emergence of institutions within human societies. For example, when Hayek quotes Hume saying that "the rules of morality are not the conclusions of our reason," it is possible that Hume means either that those rules exist independently of any conclusions we may arrive at, or

letters

that our reasoning is not what brings these rules to our awareness. The former seems to me dead right, the latter quite doubtful.

Obviously this is not the place to try to resolve these matters. It is worth noting, however, that one area wherein Hayek is probably overstating the lack of influence of reason is in the development of political institutions. Is he saying that no matter what he, for instance, concludes about the nature of political or economic matters, these matters will simply proceed on their way? In short, will he claim that neither he nor anyone can have an impact? I hope he is wrong.

Tibor R. Machan
Senior Editor, REASON

Individual Efforts Can Make a Difference

In his letter (May), Prof. F. A. Hayek tries so hard to discount the effect of individuals (dictators, despots, politicians, etc.) guiding social evolution that he sets up a rather dismal determinism. I wonder what Tom Paine would say to the notion that individuals can't make a difference.

Claiming that individuals, with or without plans and intentions, can't have a profound influence upon the direction of social evolution, in spite of all the evidence to the contrary, is surely question begging. Jesus, Buddha, Mohammed, and Marx can't be so easily dismissed. Neither can Locke, Adam Smith, or Jefferson.

To propose that cooperation will never be the result of a deliberate, creative, intellectual process is not very much more original, humanistic, or inspirational than B. F. Skinner's fatalistic ravings.

Certainly almost all social movement is the result of inertia. But some *one* usually starts and stops the inertia. This is no less true of turns for the worse, such as the 1,000-year detour from reason precipitated by Jesus, than it is for turns for the better, such as the exponential influence of John Locke.

Chris Brockman
Dryden, MI

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The Kids Are All Right

Pity the poor Democrats. Buried under the rubble of yet another landslide defeat, the party of Thomas Jefferson and Andrew Jackson drifts farther from its agrarian individualist roots and into the murky backwaters of European-style socialism. And they have the gall to excoriate us humble citizens for refusing to join them!

Democrats are especially miffed at President Ronald Reagan's success with the country's youngest voters. How can kids who are turned on by androgynous rock stars cast their ballots for a septuagenarian who gets misty-eyed talking about prayer in schools? Is it because the president speaks the language of liberty? Is it because he promises opportunity and enterprise and derides bureaucracy and the welfare state? (Never mind his uninspiring record on the same.)

No, say some Democrats, 60 percent of the 24-and-under set voted for Reagan because they are selfish, greedy, nationalistic, and materialistic. They are moral inferiors interested only in immediate gratification, in every way the antitheses of their saintly Big Chill big brothers.

"It's the unusual college student who signs up for a full semester of idealism," sniffs Yuppie sage Ellen Goodman in her syndicated column. Never mind the 19-year-old Guardian Angel who bags groceries by day and rides the infernal New York City subway by night. Ditto for the outpouring of support for the victims of famine in Africa. Private acts of charity and good will count for naught. In the eyes of the liberal establishment, young Americans' refusal to swallow the New Deal elixir without gagging brands the new generation as uncaring louts.

The prospect of millions of today's youth growing up, starting families, working hard, producing wealth, and asking nothing of the government is truly staggering. And our elders do not intend to take it sitting down.

Sen. Gary Hart, he of the new ideas and uncertain age, fired the first shot in the new generational war in a speech delivered earlier this year in Boston. Inveighing against the epidemic of individualism he sees sweeping the country, Hart called for a "new system of national service—including both military and nonmilitary opportunities" for young people. This system would be compulsory and would allow "no exemption, no deferments," he later explained. If you can't persuade 'em, enslave 'em.

National service is hardly a new idea. Early 20th-century intellectuals like William James and Randolph Bourne spoke optimistically of "an army of youth," conscripted by the state to perform good deeds galore. The idea enjoyed a recrudescence in the 1960s, when Defense Secretary Robert McNamara and anthropologist Margaret Mead, among others, championed it as an alternative to the draft.

Though Hart offered no specifics, most national-service proposals would require 18-year-olds to enter either military service or a domestic version of the Peace Corps for a period of, say, two years. (Not all national-service schemes are compulsory; voluntary programs would be massive public-employment projects.) Those choosing nonmilitary service would perform a variety of health, education, and conservation-related tasks.

The cost would be astronomical, but advocates of the scheme argue that service to one's government will enrich young lives and create the sense of community they believe this country so sorely lacks. Hart bemoans the "atomization, insularity, and a go-it-alone mentality" that supposedly characterize 1985 America, and he avers that compulsory national service will restore "a feeling of fellowship" consistent with what he calls "true patriotism." One shudders to imagine Tom Paine's reaction to this true patriotism.

There is little chance that a national-service program will be enacted by Congress, although the idea does seem to be gaining popularity. Hart's new-ideas counterpart in the Republican Party, Rep. Newt Gingrich, endorses national service, as does Ford Foundation President Franklin Thomas and the neoliberal magazine *Washington Monthly*.

What is extraordinary about Hart's crusade to deprive young Americans of two years of their lives is the reaction this totalitarian proposal has provoked. The pundits like it! Ms. Goodman lauds Hart for refusing "to give up on the young." Moderate Democratic columnist Mark Shields gushes that the senator has "challenged the young." And the good, gray *New York Times* publishes *three* op-eds within 60 days praising national service as a great way to make those selfish young brats shape up.

How far we have come in 200 years! Our forefathers spilled blood in revolt against monarchy, tyranny, and taxes. They devoted their lives, their fortunes, and their sacred honor to the cause of liberty. Today, politicians dare speak openly of enslaving our sons and daughters and brothers and sisters.

Gary Hart's response to the new generation's independence is diametrically opposed to everything the Democratic Party once stood for. The party of the individual has become the party of the state. Democrats speak hopefully of a resurgence of youthful idealism. But if they try to impress America's 18-year-olds into national service, they'll likely get clobbered with a bigger dose of idealism than they bargained for. Jefferson and Jackson would have understood. ◻

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editorials

Chalk One Up for Freedom of the Press

Paul Gordon

Warren Burger's Supreme Court tends to treat civil liberties like a Miami summer afternoon treats popsicles. So it was a most welcome surprise when the Court recently handed down a decision that actually enlarges freedom of the press.

The case was *Lowe* v. *SEC*. The issue was whether the Securities and Exchange Commission, which has registered and regulated investment advisers for 45 years now, may license financial newsletters and, under that authority, forbid a newsletter's publication because of the publisher's personal background. Lower courts have nixed the SEC's ambitions in this area before, but the agency wouldn't take no for an answer. This time, the object of the SEC's free-speech restraint took the issue all the way to the Supreme Court and won.

No doubt the SEC figured it had a good case for shutting down a financial newsletter put out by Christopher Lowe of Jersey City, New Jersey. Lowe had previously pled guilty to misappropriating an investment client's funds, tampering with evidence, and stealing from a bank, for which he duly spent time.

When the SEC told him that it would therefore revoke his registration as an investment advisor, he left the business. But when they told him that he couldn't put out his financial newsletter, either, he stood his ground and continued publishing.

The SEC is not accustomed to such insubordination (few federal agencies are). It ordered its lawyers to court to bring the *Lowe Investment & Financial Letter* to an end.

Keep in mind that the SEC never charged that Lowe had published anything illegal. As Justice John Paul Stevens, who wrote the Supreme Court opinion, noted, "there was no evidence that Lowe's criminal convictions were related to the publications; no evidence that Lowe had engaged in any trading activity in any securities that were the subject of advice or comment in the publications; and no contention that any of the information published . . . had been false or materially misleading." In fact, the worst complaint that the SEC could dredge up from Lowe's readers was that they weren't receiving the newsletter regularly enough.

The Supreme Court, to its credit, would have none of it. It got Lowe off the hook, but it went further than that. In an 8-to-0 decision, the justices declared that financial newsletters dispensing investment information and advice are exempt from the SEC's obnoxious registration requirements vis-à-vis investment advisors.

Five of the justices declined to consider the case on First Amendment grounds. Rather, they decided as they did because when Congress passed the Investment Advisers Act (the legislation mandating the SEC to regulate investment advisers) in 1940, the law excluded "the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation."

For defenders of freedom of speech and freedom of the press, this statutory argument against the SEC's overweening power is a limited victory. Yet it is significant that three of the justices, while voting with the majority, signed a minority opinion arguing that the SEC's attempt to forbid Lowe's publishing activities was an unconstitutional restraint on First Amendment freedoms.

Indeed, the *Lowe* case suggests larger questions. What rationale can there really be for a government agency to stop the Christopher Lowes of this world from publishing their newsletters? Evidently, the SEC believes that the government has a duty to prevent ex-convicts from infecting the general population via the printed word. If so, then the bonfire consuming Christopher Lowe's newsletters could be stoked with the widely distributed works of other convicted criminals—such as O. Henry, Jean Genet, Oscar Wilde, and John Ehrlichman.

But perhaps the SEC in its heart of hearts has been less ambitious: it may want only to protect gullible minds from bad financial advice. By this reckoning, the SEC in its wisdom would have to tally the recommendations of hundreds of financial newsletters, rank the quality of their recommendations, and then every year ban inadvisable ones—the lowest third? the lowest half?—from publishing. Consumer protection, SEC-style, would logically require no less.

REASON, we're proud to note, was the first general-circulation magazine to draw widespread attention to the SEC scheme of regulating financial newsletters, with an investigation published in January 1983 ("Subverting the First Amendment," by Michael McMenamin and William Gorenc). "There is an agency of the government," warned the article, "that has arrogated to itself the power to ride roughshod over the First Amendment—first with the requirement that permission be obtained and requirements be met before access to a printing press be allowed; then, once its foot is in the door, with demands pursued via lawsuits and censorship of editorial content."

That abuse of power is now ended, thanks to the Supreme Court. And those of us who may never even glance at a financial newsletter can yet breathe a bit more freely. ◻

notes

A reader of REASON: "I have just read Jack Wheeler's piece 'Fighting the Soviet Imperialists: The New Liberation Movements' (June/July), and I am surprised to find that he included the *contras* of Nicaragua, after all the documented cases of *contra* murder, rape, and torture."

Reporter Charles Lane, writing in the May 20 *New Republic* after a week in Nicaragua: "A woman whom I will call Marta . . . showed me her most prized possessions: pictures of her 17-year-old son—and photos of his body, in an open casket, his face still caked with dried blood. The young man, a construction worker, was killed when his truck ran over a *contra* land mine . . . .

"I sat and waited for her to denounce the *contras* and the *Yanquis*. Instead, she vented her anger on the Sandinista regime the *contras* are trying to overthrow. Why do they refuse to negotiate peace? Why do they send untrained boys to die far from home? Why can her family no longer get rice, milk, meat, or chicken? And why are they always being watched by the CDS, which denies ration coupons to those who complain? . . . With a tone of resignation, Marta said: 'We were happy when we heard about the revolution. But now we've changed our minds.' " **—M. Z.**

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brickbats

Sweet mystery of life? What do Korean soup mix, British meat sauce, Australian meringue, and Japanese *furikake* seasoning have in common? Until last May, these products were stopped at the docks and off-limits to Americans in an effort to protect domestic sugar producers from foreign competition. The Department of Agriculture admits it went too far with its bittersweet regulation. For example, the nation's biggest importers of Korean food products had 230,000 packages of noodles with soup base locked up in a California warehouse. The soup base is less than half of one percent sugar. "If we'd separated the noodles from the little package of soup base and brought them in separately, we'd have no problem," says a spokesman for the company. After receiving hundreds of sour letters from specialty gourmet shops around the country, President Reagan finally lifted the strict quotas—but not sugar protection itself.

Watch the bouncing sex offenders. The police chief of Santa Monica, California bought Weston J. Hill a ticket to Miami following Hill's conviction, in retaliation for a Florida judge's shipping a prostitute to his city. But Hill was soon arrested for exposing himself in public, so Florida shipped him back to Santa Monica. You can't really blame Santa Monica officials. They felt that California owed Florida one because a Fort Lauderdale judge in 1982 gave Melanie King, who'd been arrested 47 times for prostitution, a choice between prison or a one-way ticket to California. Miss King went to California and was soon arrested on charges of prostitution. Both states now promise to keep their own sex offenders. Talk about being bicoastal.

For years, the owners of beachfront lots in Oxnard, California, have been seeking permits to build on them. For years, they've been turned down by the city and state because the lots have been badly eroded and the main road is often flooded by high tides. Now, the city and state are suing the landowners so that the public can use the vacant lots, arguing that because the lots have remained vacant and have been used by the public all these years, the public now has a right to use them in perpetuity. You see, the government kept the lots vacant and now plans to claim the lots for the public *because* they're vacant. Catch-22 is an understatement.

The owners of the Upper Crust bakery in Salt Lake City are in a stupor over state liquor bureaucrats who don't appreciate the punch packed in their mocha bourbon cake. Selling the cakes, which contain three tablespoons of bourbon, violates Utah liquor laws. Owner Stewart Jacobson, who sold the cakes for three years without complaint, says he'll boil the liquor out to appease the state. "What happens if we use vanilla extract in our cakes?" he asks. The extract, containing 40 percent alcohol, is not regulated by state liquor laws. Another vanilla cupcake, my good man, and make it a double!

The cradle-to-grave "security" provided by Sweden's welfare state makes for a very open society. So open, in fact, that almost every resident's taxable income is public information. The curious Swede who wants to know what a neighbor grossed last year can buy a copy of *Taxeringskalender*, a regional directory listing every Swede who earned more than $15,000 a year. Let's hope the tax "reformers" in Washington don't hear about this one.

A judge in Paulsboro, New Jersey, presented an interesting choice to the parents of two hooky-prone boys. Either spend 273 days in jail because of their sons' truancy or have them declared "incorrigible" and let the state teach the kids the value of an education. The parents opted for prison, and kindly Judge David Keyko released them after a week, saying they'd learned their lesson. The boys, 13 and 14, stayed in foster homes while Mom and Dad learned all about compulsory education. The parents claimed they brought their boys to school each day, but the slightly-built youngsters would cut out because they were routinely assaulted by other students. Keyko told the parents the kids had brought the assaults on themselves because they have "wise mouths." No one will accuse Keyko of that.

—Mark Edward Crane

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Ten years ago I decided to do something about changing the traditional way corporations are formed. My name is Ted Nicholas. I started 18 corporations of my own. Each time it cost me a small fortune in legal fees. I felt the "mystery" surrounding setting up a corporation was silly. It needed to be simplified. And slashed in cost. The average person — little guy — would then be able to easily set up a corporation.

So I wrote *How To Form Your Own Corporation Without A Lawyer For Under $50.* Today, this book is the largest single source of new corporations in the U.S., already over 775,000 people have been helped to set-up their own corporation. The book is revised at least twice a year and is now in its 19th revised edition.

With the help of my book, here is what incorporation can do for you:

Liability Protection. Gain absolute protection against personal liability in the event of any disaster. If for any reason your corporation gets into difficulties, often through no fault of your own, the only assets you need risk are those you put into your corporation. That amount can be zero. But, a corporation permits your home, savings, securities and other valuables to be kept separated and fully protected from any problem which could involve your corporation. They are never at risk.

In a partnership or proprietorship, your personal liability is unlimited — quite dangerous in an age where people routinely sue for astronomical sums. You are also personally liable for the blunders of a partner.

Start with Zero Capital. I'll show you how you can legally and ethically start many incorporated businesses with zero capital, absolutely none.

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Lower Tax Rates. In a corporation, the tax rate on your fist $25,000 of income is only 15%. On income of $23,000 to $50,000 it's only 18%. From $50,000 to $75,000 it's 30%. Compare these rates to what you are paying now.

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trends

Prince of Patriots

Some guys just can't get a break. Flamboyant rock star Prince, whose provocative lyrics and stage show have earned him the wrath of right-wing preachers and meddlesome moral crusaders, is feeling the heat from the left these days. His sin: anti-communism.

GARY LEONARD

Rock star Prince: Funky patriot?

The superstar sybarite's new psychedelic album, *Around the World in a Day*, boasts an infectious, patriotic dance tune entitled "America." The song denounces communism—"Communism is just a word/But if the government turns over/It'll be the only word that's heard"—and implores, "America, America/God shed his grace on thee/America, America/Keep the children free."

Well, no sooner did the album hit the charts than the notoriously hip *New Republic* ridiculed Prince as a "neocon punk." Next to weigh in was *Rolling Stone*, the entertainment Bible for graying yuppies obsessed with purchasing stereo equipment. "Ugly," sniffed the tabloid, which lamented Prince's fall into "wacko anti-communism."

What Prince understands, and his detractors apparently don't, is that rock and roll (or any form of artistic expression) can only flourish in a free society. The poets languishing in Castro's jails and Gorbachev's gulag are grim reminders of the fate of artists in communist nations.

Prince's pro-liberty stance may displease the critics, but it's sure music to our ears. He can play at REASON parties any time he wants to.

Economic Growth Is a Woman's Best Friend

That women hold a far greater percentage of top-level jobs in the Reagan administration than they did during Jimmy Carter's years in office is just one aspect of a much broader social trend: women's participation in the labor market has increased remarkably over the last few years.

University of Chicago economist Gary Becker recently noted in a *Business Week* column that "between 1979 and 1984, the earnings of women compared to men rose at probably the most rapid rate in our history"—this despite the Reagan administration's opposition to all sorts of proposed legislation and programs intended to better the economic lot of women. "The fact that such opposition failed to impede the economic gains of women," Becker wrote, "suggests that largely silent market forces, not the political activity that captures so much publicity, have mainly determined the economic position of women in our society."

The increased proportion of women in the nation's work force—from 15 percent in 1890 to an estimated 50 percent in 1990—is mainly the result of economic growth, pure and simple. "Indeed," Becker reported, "women stepped up their participation in the labor force in all countries that experienced strong economic growth" in this century. As economies expanded, so did the demand for workers, and women responded by taking jobs outside the home in greater numbers.

Moreover, Becker noted, "the growing commitment of women to the labor force, especially during the last few decades, [has] reduced the difference in earnings between men and women." Recent research by Stanford University professor Victor Fuchs shows that women's earnings have "been rising at a rapid pace during the 1980s," as far more women have entered highly skilled occupations such as medicine, law, and accounting.

Just how much have civil-rights legislation and affirmative-action programs contributed to the phenomenon? Not much, concluded Becker. "Such programs can hardly explain the steady growth in the employment of women prior to 1950, or its accelerated growth during the 1950s and 1960s," he wrote, because such programs were either nonexistent or not widespread. "Nor can equal-pay-for-equal-work legislation alone explain the narrowing in the earnings gap between men and women in the past 15 years," Becker claimed. "For one thing, this gap also narrowed in countries, such as Italy and Japan, that did not introduce legislation."

It is women's own choices, not government programs, Becker concluded, that have fueled a great improvement in their economic well-being.

The Twilight For Zones?

There ain't no such thing as a free zoning law: like other governmental intervention in the functioning of the free market, zoning laws that restrict the development of housing ultimately extract a price from someone, and it's very likely to be the renter and the home buyer. That idea, along with strategies for reform, was developed at a recent conference held at the University of California at San Diego on the theme "Affordable Housing for the '80s."

The insight that zoning artificially inflates housing costs is hardly new. Free-market economists have understood it for some time, and the case for radically cutting back on zoning restrictions got a much-needed boost in 1982 in the report of President Reagan's Commission on Housing. As Samuel Pierce, secretary of the Department of Housing and Urban Development (HUD),

said at the California conference, "Agreement is growing that over-regulation of home building drives up costs unnecessarily, and that regulatory requirements should be limited." Local government regulations, he noted, "account for a significant portion of the cost of new housing. And, by limiting possibilities for new housing construction, those same regulations force up the prices of existing housing as well."

According to the *Los Angeles Times*, there was some disagreement at the conference over just how much local regulations raise housing costs. Washington University law professor Daniel Mandelker speculated that "if we repealed every land-use law and zoning ordinance in the country, we'd probably not save more than 5%," the *Times* reported. Others, however, estimate potential savings as high as 20 and even 30 percent.

What happens without zoning? In the past, planner Dick Bjornseth has described the experience of Houston, where zoning regulations are virtually nonexistent ("Houston Defies the Planners and Survives," REASON, February 1978). At the San Diego conference, countering the common belief that a city can't get along without zoning, he commented, "A city without zoning is like a fish without a bicycle."

And HUD secretary Pierce told of some modest experimental programs in which HUD is working with local governments to show that minor changes in local regulations and speeding up the building-permit process can reduce costs without affecting safety or quality. Pierce said that HUD is trying to start affordable-housing programs of this sort in all 50 states by the end of the year.

There is widespread agreement that change must come at the local level. The Commission on Housing recommended that to reduce housing costs, state and local legislatures should eliminate zoning restrictions that limit housing development unless they are "necessary to achieve a vital and pressing governmental interest." A model statute in accord with the commission's recommendation has been drafted by Douglas Kmiec, a University of Notre Dame law professor. And keynote speaker Bernard Siegan, a University of San Diego law professor and member of the 1982 housing commission, told the conference that California Assemblyman Gil Ferguson (R), who was participating there, would be introducing a bill in the state legislature based on the "vital and pressing" standard.

Noting that not everyone agrees with this standard, Siegan is hopeful that it is a move in the right direction. "With other deregulation—airline, trucking, and broadcasting—who knows where this might go?" he said. "One area that has not been deregulated is land use. Maybe its time is coming."

Fowler & Co. Loosen the Strings on Cable TV

Even people who don't often praise government bureaucrats—and who does?—can't help but be pleased by the strongly deregulatory direction the Federal Communications Commission (FCC) continues to take under Chairman Mark Fowler.

Cable television is one notable recent beneficiary of the FCC's free-market good will. In what FCC commissioner James Quello heralded as a "regulatory emancipation proclamation" for the cable industry, the FCC is now interpreting legislation passed by Congress such that more than 75 percent of the nation's cable systems, serving more than 90 percent of the nation's cable subscribers, will soon be free to set their own payment rates.

FCC chairman Mark Fowler: Deregulation rules!

The legislation in question is the Cable Communications Policy Act of 1984, a mixed bag of reforms setting federal policy toward the cable industry. The act permits the regulation of basic-cable-service rates by franchising authorities (usually cities) only in those areas in which cable television is not subject to "effective competition"—and it left the job of defining effective competition to market-happy Mark Fowler's FCC.

The FCC proceeded to define "effective competition" as a situation in which a cable system serves a community that is within the range of three or more over-the-air broadcast stations. This loose standard will liberate many cable systems from local rate controls effective December 29, 1986, giving cable operators the same pricing freedom as shoe stores, newspapers, and most other businesses.

Reaction to the FCC ruling was swift and utterly predictable. National League of Cities executive director Alan Beals bemoaned the FCC's failure "to recognize the interests of cities and American consumers." National Cable Television Association president Thomas V. Mooney, on the other hand, lauded the commission for doing "a very good job" in carrying out the deregulatory intent of Congress.

Now if Congress only had the guts to completely deregulate the cable-television industry. A nice start might be to strip local officials of their power to grant monopoly cable franchises. Then we'd see some *real* free enterprise.

Banking Deregulation Shows Up as Asset on Many Accounts

De facto nationwide banking competition is becoming more and more inevitable in spite of federal laws prohibiting interstate banking except when a state government explicitly chooses to allow out-of-state banks within its borders. In the last few months these restric-

trends

tions, first devised during the New Deal, have been tottering.

Part of the change has come because state governments have been doing lately what they could have done all along, which is to permit entry by out-of-state banks. The American Bankers Association recently counted 20 states that have taken the plunge and permit some interstate banking.

For several states, it's a matter of regional cooperation. Three New England states permit a bank in any one state to buy or start a bank in the other two, and a handful of similar arrangements have been devised in the Southeast and West.

There's a growing realization of the potential benefits of allowing banks to compete more effectively with nonbank financial institutions such as Sears, Roebuck & Co. and Merrill Lynch & Co., which offer low-cost financial services nationwide. In addition to predictable benefits for consumers—higher interest rates on savings, more loans at lower rates, and better service—there is potential for more stability in the banking industry.

Despite promises that government regulation would protect banks from folding, there were 79 bank failures last year—a post-Depression record. As the bad news has piled up and state governments search frantically for a *deus ex machina*, interstate banking looks increasingly attractive when out-of-state banks offer to purchase the wreckage of failed institutions. For example, in the wake of the recent run on savings and loan institutions in Ohio, New York banks stepped in to buy two savings banks and Home State—according to *Business Week*, "the most severely wounded of the state's thrifts."

Yet there are still fears that with unrestricted interstate banking, giant New York and California banks will overwhelm their small-town competitors. Indeed, that kind of fear was an impetus for interstate-banking restrictions originally, and today, it is a big reason for the regional interstate compacts that are careful to exclude California and New York. Citicorp recently brought a suit challenging regional compacts as unconstitutionally discriminatory, but in June the Supreme Court ruled against Citicorp and let regional interstate banking stand.

In fact, however, there is evidence that the fear of big-city banks is misplaced. There are potential advantages for large *and* small banks with freer interstate banking. As Chemical Bank chairman Walter Shipley recently noted in an essay in *Business Week*, freer interstate banking would mean that all banks could "diversify risks in their loan and deposit portfolios to best advantage," without having to fret about state borders. Smaller banks, especially, he noted, tend now to "concentrate loans in the industries of their particular region." Hence the rippling financial disruption when, for example, the Texas oil industry slumped. At a time when the banking system needs all the stability it can get, interstate banking would be a big plus.

Moreover, interstate banking appears *not* to be the threat to small banks that opponents of deregulation fear. Via the back door of establishing "nonbank banks" and by moving into states that

global trends

Fighting the Good Fight

TORONTO, CANADA—Dolly Foran is a grandmother who runs Arlington Crane, a family business in Hamilton, Ontario, just 40 miles west of Toronto. Last summer, she tried to hire her 18-year-old grandson for the school-vacation period, but since he was not "certified" by the union, she was not "allowed" by the government to hire whom she chose.

Ms. Foran had had many years of problems dealing with unions, but this was the straw that broke the camel's back. She decided to fight the cause of those who did not wish to join unions or have anything to do with them. At the outset she made it quite clear that she was not opposed to the absolute right of those who wished *voluntarily* to join collective associations to do so. She would, however, oppose unions that insist on "closed shop" arrangements, thus trampling on the rights of those who want to work without being forced to join unions.

She began quietly sending letters to businessmen, sometimes as many as 2,000 in one week. Contributions began to come in; they were put in trust for legal bills, currently estimated at a half-million dollars.

Using the three-year-old constitution, Canada's Charter of Rights, as her ally, Foran wants labor laws changed to outlaw closed shops, so that every worker is free to choose to join a union or not. Though 21 states in the United States have adopted right-to-work laws, no province in Canada has yet done so.

Foran points out that Ontario's Labor Board, for example, grants free choice to citizens who voluntarily wish to be members of trade unions but simultaneously denies the same right of choice to those who wish *not* to be members. For workers who on principle do not wish to join a union, this often means an automatic loss of livelihood, since they may well be denied the right to earn a living in a specifically chosen trade or profession. Moreover, union members have very little, if any, say regarding how their union dues are spent.

Until very recently, Dolly Foran has been fighting her battle almost singlehandedly. Not long ago, however, she joined forces with freedom-of-choice-oriented workers at Eaton's, a department-store chain in Canada that was struck by a minority of its work force earlier this year. And if necessary, she will carry her advocacy of freedom of choice to the Supreme Court of Canada.

—Bruce Evoy

Shearing the Welfare State Down Under

NEW ZEALAND—While conservative governments chip away at Western welfare states, a Labour government—that's right, Labour—is leading an "exhilarating dash for economic freedom" in

(Continued on page 18)

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trends

have relaxed their rules, the big banks are going interstate in spite of federal law. But this hasn't kept new small banks from proliferating. In fact, deregulation may be having the opposite effect. The *Wall Street Journal* recently reported that 455 new banks across the country opened their doors last year, almost double the 1979 figure.

Meanwhile, interstate banking may be on the way toward official recognition by the feds. After the Citicorp defeat in the Supreme Court, the House Banking Committee voted in favor of "full interstate trigger" legislation. This would let states preserve the regional arrangements they have crafted—but beginning in 1990, a state that had permitted banks from *some* states to do business within its borders would have to let in banks from *any* state.

This is good news, but there's a wrinkle. In June, the US Court of Appeals in Atlanta ruled that it is illegal for non-bank banks to collect deposits across state lines—but *Business Week* reported that "ironically, the Atlanta decision seems to have turned up the heat in Washington" for Congress to liberalize interstate banking.

It's a sign of the times that Federal Reserve chairman Paul Volcker, who has heretofore opposed interstate banking, recently came out publicly in favor of the "full interstate trigger" approach. In congressional testimony, he declared that "the Federal Reserve Board believes the time has come for Congress. . .to authorize some interstate banking." And after reviewing some of the developments that make Depression-era restrictions obsolete, he noted, "Markets will continue to respond and change will take place." No free-market devotee could have put it more eloquently.

Defusing the Population Bomb

Remember the population bomb? The ominous predictions of an overcrowded earth, replete with suffocating, starving masses? This doomsday worry, and the coercive population-control efforts it spawned, is now being countered by a more realistic, humane, and, not incidentally, market-oriented view—"supply-side demographics."

Supply-side demographics is explained in a new book that grew out of a symposium held recently at the Washington, D.C.-based American Enterprise Institute (AEI), *Are World Population Trends a Problem?* Editors Ben Wattenberg and Karl Zinsmeister summarize this new approach to population: "Every baby. . .comes equipped with two hands and a brain as well as a mouth. People not only consume, they produce—food, capital, even resources. . . . Population growth need not be bad; in some cases, it may even be good (as for instance in large stretches of Africa, where the sparseness of population prevents the erection of modern communications and transportation infrastructure)."

The leading exponents of this view are Lord P. T. Bauer of the London School of Economics and Julian Simon of the University of Maryland, both of whom participated in the AEI con-

global trends

(Continued from page 16)

New Zealand, reports *The Economist.*

The architect of this stunning reversal of form is Prime Minister David Lange. Lange took office in July 1984 and inherited an economy in shambles after two years of wage, price, and interest-rate controls imposed by Conservative Prime Minister Robert "Piggy" Muldoon. Piggy complemented the controls with large subsidies to inefficient industries and wasteful pork-barrel projects.

Since assuming power, Lange and the Labour government have abolished the panoply of price controls, slashed corporate subsidies, ended exchange controls, reduced agricultural and export subsidies, and taken pensions away from the wealthiest elderly New Zealanders. And there's more. Lange is proposing tax cuts (the top marginal income-tax rate would be reduced from 66 percent to 45 percent) and a liberalization of New Zealand's rigidly protectionist trade policy.

New Zealand stumbled into the thicket of protectionism and subsidies partly in response to the protectionist policies of other governments. *The Economist* explained that New Zealand's highly efficient dairy industry has almost no foreign markets open to it—93 percent of the world's butter eaters are prevented from buying inexpensive New Zealand butter by restrictive trade policies. New Zealand foolishly retaliated by erecting its own trade barriers and subsidizing its own industries, a wonderful example of blowing your brains out to spite your enemy.

Lange has begun a long and necessary trek back toward economic common sense. Businessmen are ecstatic. *The Economist* quotes one banker, "We now have a nominally socialist government which is saving us with almost Singaporean policies, where previously we had a conservative government which was ruining us with very socialist ones."

The Economist speculates that Lange has adopted a near-pacifist foreign policy—New Zealand refuses to allow nuclear-armed American warships to use its ports—in order to deflect the left's attention from his bold economic moves. Nevertheless, trade-union and conservative opposition to the liberation of New Zealand's economy persists. Time will tell if a Labour government has the moxie to advance the cause of freedom down under.

Global Roundup

■ *Brussels privatization sprouts.* The Belgian government is preparing to sell off Sabena, the national airline. *Free World Chronicle* reports that the sale "could be the first step toward a major reduction in public-sector involvement in the economy."

■ *Rendering unto Caesar.* In June, the Italian government and the Vatican concluded an agreement that ended Roman Catholicism's status as the state religion of Italy. Socialist Prime Minister Bettino Craxi said the new arrangement "exalts religious freedom and the freedom of the church."

ference. Lord Bauer points out that a number of less-developed countries—Taiwan, Hong Kong, Kenya, the Ivory Coast, and Colombia, for instance—"have combined rapid population increase with rapid, even spectacular economic growth for decades on end." By contrast, the horrible famines besetting the Third World are occurring in sparsely populated regions where land is certainly no less fertile than in, say, Taiwan or Hong Kong.

If overpopulation is not the culprit in Third World misery, what is? Lord Bauer places much of the blame on heavy-handed government intervention—the "suppression of private trade;...expulsion of productive groups, especially ethnic minorities; large scale confiscation of property; forcible collectivisation; restriction on the inflow of capital...and of consumer goods"; and other foolish and harmful policies.

Supply-side demographers focus on the creative, resourceful potential of individuals, who generally will produce wealth and provide for themselves if governments have the good sense to leave them alone. "The central benefit of more people in a more developed world," observes Julian Simon, "is that there are more ingenious people to invent new ideas." Former Ambassador Clare Booth Luce adds that the lack of capitalism and democracy, not an abundance of people, is the real tragedy in the Third World.

A recurring theme in *Are World Population Trends a Problem?* is that family planning is a decision that must be left to individuals, not governments. Several conference participants condemn state-sponsored barbarism in China (where infanticide and late-term abortions are common responses to the official "one child per family" rule). And Lord Bauer argues against *any* government role in population control, noting that in many poor nations, "advice, education, and persuasion in practice shade into coercion."

The gloom-and-doomers are still with us, praising state intervention in reproductive decisions and predicting that more people means fewer resources and a diminished standard of living. But the intellectual tide is turning. Supply-side demographers and free-market economists are articulating a hopeful, pro-freedom alternative to the lugubrious declamations of the people-are-bad population bombers.

Soaring toward Fare Markets

Calls for reregulating the airlines never seem to diminish, even though consumers have benefited enormously from airline deregulation. But the evidence of benefits continues to mount. Recently, an airline analyst discovered that deregulation has had a previously unnoticed effect on air fares—a decline in discriminatory pricing.

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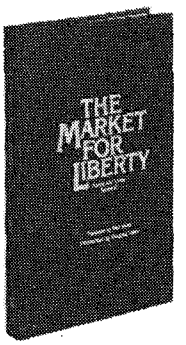

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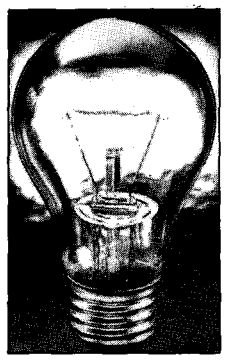

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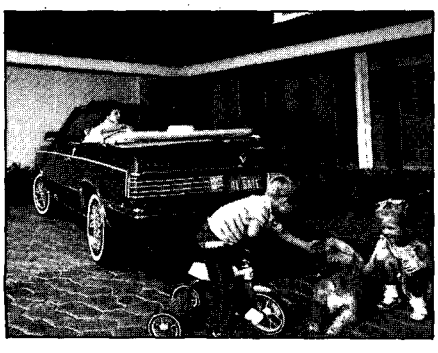

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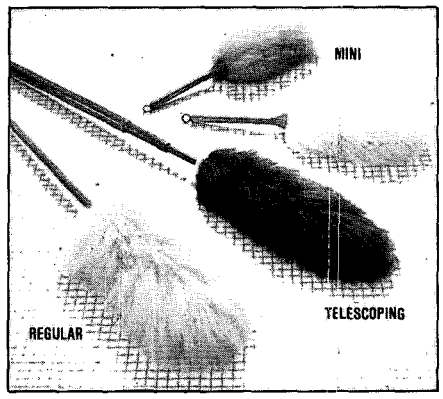

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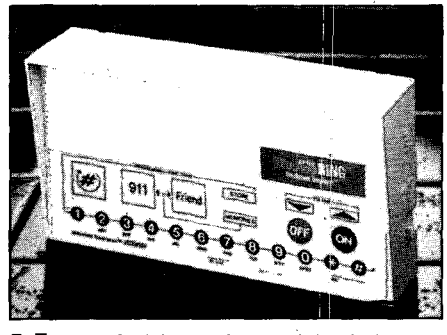

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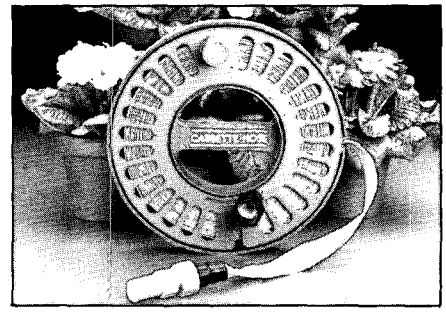

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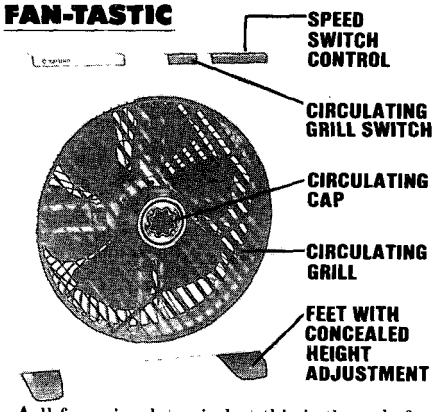

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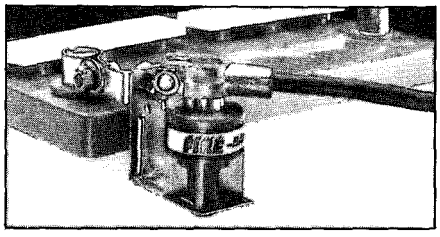

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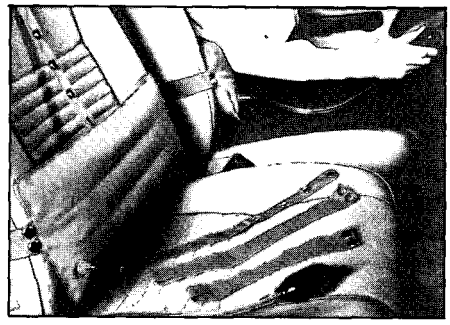

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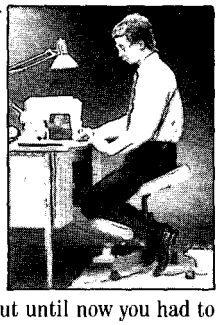

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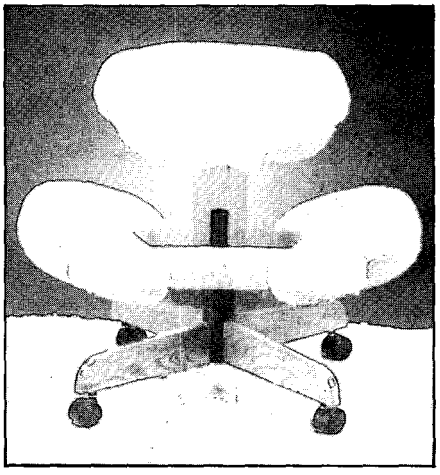

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lower their air fares—advance purchase of tickets, round-trip travel, minimum stays, red-eye flights, and the like. The fewer of these provisions that passengers can use, the more they pay.

Generally, these mechanisms have little or nothing to do with the actual cost to the airlines of transporting passengers. Rather, they were devised by the airlines to increase revenues by segmenting the passenger market according to "demand elasticity," or how flexible passengers are in their travel plans. The passengers who are least flexible—such as business travelers—pay more, while those who jump the contrived hurdles pay less.

Discriminatory pricing was born in the days when regulation was in full force. But in a study prepared for presentation in August at the Atlantic Economics Society, United Airlines economic analyst Joseph Schwieterman (reflecting his own views and not necessarily the airline's) noted that according to economic theory, "if a firm attempts to practice price discrimination [in a perfectly competitive marketplace], it is likely to lose market share: well-informed buyers simply will buy from other sellers in that market." That's the theory. And when deregulation actually came about, experience tended to bear it out.

Schwieterman looked at 75 airline markets, 25 of which were oligopolistic (served by three or more airlines), 25 duopolistic markets (served by two airlines), and 25 monopolistic markets (served by only one airline). He found that in the oligopolistic markets, where competition was most intense, the airlines scrambling for passengers have been hard put to keep the comfortable old discriminatory pricing intact. From 1979 to 1984, the disadvantage in fares suffered by the least flexible passengers (Schwieterman calls them "nondiscretionary passengers") declined markedly from 40 percent to only 28 percent. "While the evidence suggests that all consumers have benefited from deregulation," Schwieterman concluded, "the non-discretionary . . . markets appear to have benefited the most."

Part of the decline in discriminatory pricing Schwieterman attributed to the advent of discount airlines like People Express, which operate chiefly in oligopolistic markets. "Despite the apparent advantages offered by full-service carriers," Schwieterman wrote, "most major carriers have been unable to maintain their multi-tiered price structures in these markets [with low-price competition]."

And how about markets where there's not as much competition? In duopolistic markets, the difference between fares paid by the most flexible and least flexible passengers declined somewhat from 37 percent in 1979 to 33 percent in 1984. Even in the uncompetitive monopolistic markets, where deregulation's critics had predicted an air-fare Armageddon in the wake of the 1978 Airline Deregulation Act, Schwieterman reports that the differentials in discriminatory pricing "remained roughly the same since 1979." Perhaps the airlines in monopolistic markets temper their affection for discriminatory pricing with the knowledge that if they start overcharging too much, competition may well be lurking around the corner.

There's a useful lesson in Schwieterman's statistics. It's that the federal government's old scheme of airline regulation—ostensibly the great protector of the passenger—actually gave rise to pricing structures that artificially overcharged certain groups of passengers. And now that the feds have largely withdrawn from the picture, market competition is gently and inexorably nudging much of the old discriminatory-pricing system toward oblivion.

Milestones

■ *Bigotry unprofitable?* The *Los Angeles Times* reports that KTTL-FM, the Kansas radio station that won national notoriety two years ago by broadcasting racist and anti-Semitic preachers, is not what it once was (without regulatory intervention, we might add). After falling on hard economic times, the station's call letters were changed to KMCS, its format was switched from country to rock—and it's been more than a year since it last aired bigoted ministers.

■ *States resist booze blackmail.* Five Western states—Wyoming, Colorado, Idaho, Montana, and South Dakota—are fiercely resisting federal pressure to raise their legal drinking ages to 21. Legislation enacted last year threatens to reduce a state's federal highway grant unless its legal drinking age is 21 by October 1, 1986. "It's blackmail," complained Wyoming Governor Ed Herschler to *USA Today*. Three of the states—South Dakota, Wyoming, and Idaho—have sued, charging that the feds' dictate is unconstitutional.

■ *Grace not under pressure.* In May, a California superior court judge dismissed a "clergy malpractice" suit. A couple sued Grace Community Church of the Valley, alleging that incompetent counseling by four ministers had been a factor in the suicide of their 24-year-old son. But Judge Joseph Kalin observed, "There is no compelling state interest to climb the walls of the separation of church and state and plunge into the pit on the other side, which certainly has no bottom."

■ *Sensible positions.* In a recent congressional briefing, a spokesperson for the National Opinion Research Center noted that New Right efforts notwithstanding, "there has been no reversal of liberal positions on sexual and reproductive practices." A majority of Americans favor wide dissemination of birth-control information (including to teenagers) and legal abortion, and they believe that sexual relations before marriage are not necessarily unacceptable.

■ *Bureaucracy bypass.* Tired of waiting in line at the Department of Motor Vehicles? If you live in Los Angeles, there's an alternative. For an average fee of $25, California Automobile Registration Service (CARS) will stand in line for you at the DMV and take care of things like registering your car or transfering its ownership. For 10 years CARS has handled DMV paperwork for car dealers and recently began serving individuals, as well.

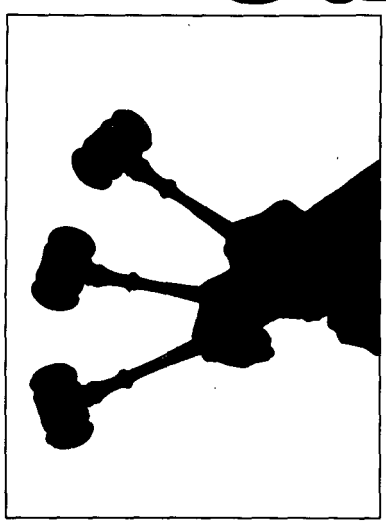
■ *Letter perfect?* United Parcel Service has announced that it will deliver overnight letters for $8.50, which is more than 25 percent below its competitors' rates. And despite the myth that only the Postal Service is capable of providing universal delivery, the company announced that it is expanding its letter- and package-delivery service from 88 percent of the population to every hamlet in the United States.

—Robert W. Poole, Jr., Paul Gordon, and Bill Kauffman

From neighborhood disputes to corporate lawsuits, people are discovering the merits of private alternatives to the government's overloaded courts.

by Paul Gordon

Justice Goes Private



Virgilio Razzo, a retired painter, and his wife, Matilda, were kept awake by a barking dog in their neighborhood.

Walter Kocher is the vice-president and general counsel of a corporation that had a multi-million-dollar lawsuit on its hands.

Don and Karyn Souther, a couple with two daughters, were getting a divorce.

A barking dog, a corporate lawsuit, a marriage ending—each of these problems is conventional enough. And if they had come up a few years ago, everyone involved would have assumed that the only place they could go with these problems was to court.

Yet in all three cases, they made a quite different choice: they opted for "alternative dispute resolution," doing in the private sector what most people consider solely within the province of the official, government-operated courts.

Opting out of the system to obtain protection of rights is not an outlandish proposition. Policing was once done almost completely by police, but today there are more private security personnel than there are police officers on government payrolls. Meanwhile, volunteer organizations such as the Guardian Angels and community groups such as Philadelphia's House of Umoja, which was set up to reduce gang warfare and provide guidance for juveniles, are a most welcome part of quite a few urban neighborhoods. In this context, it's no surprise to hear that the Salvation Army is handling probation privately in several Florida counties for some misdemeanants.

What's happening elsewhere in the legal system—opting out—is also happening to the courts themselves. Without fanfare, more and more people are taking their conflicts to private mediation, arbitration, and other alternative methods of dispute resolution. The phenomenon by now even has earned an acronym—ADR.

On a small scale, Americans have been resolving disputes privately for centuries. In *Justice Without Law*, published in 1983 by Oxford University Press, legal historian Jerold Auerbach traced the pedigree of private ADR all the way back to the Puritans in the 1600s. Throughout the 1800s, an astonishing number of Christian utopian communities were set up around the country, and many shunned established legal institutions. And in the late 1800s and early 1900s, Jewish emigrants from Europe brought along their own tradition of resolving conflicts outside the law. The Dutch in colonial New Amsterdam, the Scandinavians in the Midwest,

and the Chinese on the West Coast also employed private ADR as a vehicle of ethnic solidarity. And Auerbach discovered that businessmen without a religious or non-English bone in their bodies had as early as the 1600s established arbitration as a firm fixture along the New York-Philadelphia commercial axis. In 1768, the New York Chamber of Commerce set up the first private tribunal in America for settling business disputes.

Americans today are returning to their ADR roots in ever-greater numbers. After decades of fairly steady but unremarkable growth, the 59-year-old American Arbitration Association saw its annual caseload almost double between 1970 and 1984. Innovations that didn't exist 10 years ago, such as volunteer neighborhood "community boards" and corporate mini-trials, are spreading. Even the American Bar Association, where the pace of reform is often glacial, is getting into the act; the organization is busily conducting workshops and seminars in several areas of the law for attorneys who want to learn about ADR, and its Special Committee on Dispute Resolution now maintains an office in Washington, D.C.

One of the reasons explaining why private ADR looks so good is that traditional litigation these days looks so bad. Going to court has never been a barrel of laughs. "I must say that, as a litigant, I should dread a lawsuit beyond almost anything else short of sickness and death," the respected jurist Learned Hand declared, and that was in 1926. Since then, the judicial system has only gotten worse.

There is little agreement on the cause for it but widespread agreement that the system is overburdened. Civil case filings in the federal courts have grown sixfold since 1940, while the nation's population hasn't even quadrupled in the same period. Business cases that last for years and produce truckloads of documents have become commonplace, and people are no longer shocked to hear of strange cases such as a child suing his parents for "malparenting."

Yet the often-voiced perception that America has become a litigious society, with everyone suing everyone at the drop of a hat, isn't borne out by the facts. An estimated one percent of the American population receives 95 percent of the legal services provided. And there is some evidence that, because the system is so slow and inefficient, people are often reluctant to pursue their grievances or claim their rights via legal action.

Anyone who does take the plunge into the legal system certainly needs a full reservoir of patience. Economist Bruce Benson argues that court congestion serves to "ration" justice: those who are willing and can afford to wait and wait some more might get a trial—if the judge doesn't throw out the case somewhere down the line.

Neighbors get together to resolve their conflicts with the assistance of trained volunteer judges at Community Boards hearings like this one in San Francisco.

Even the pillars of the system admit that something is wrong. Chief Justice Warren Burger warns: "We have reached the point where our systems of justice—both state and federal—may literally break down before the end of this century." And Derek Bok, the president of Harvard University and former dean of the law school there, writes that the system is "strewn with the disappointed hopes of those who find [it] too complicated to understand, too quixotic to command respect, and too expensive to be of much practical use."

The speeches are bracing and the editorials rousing, but little changes for the better. The crisis seems almost impervious to resolution. But investigation of the scene from Los Angeles to New York reveals that in a growing number of places and an increasing range of circumstances, the private sector is providing a way out through alternative dispute resolution.

Lots of digging for information doesn't turn up any good count of how many individuals and groups across the country are offering ADR. They're springing up so quickly, it's not surprising.

Last year, though, the Washington-based National Institute for Dispute Resolution, an information clearinghouse that opened its own doors only in 1983, published a Dispute Resolution Resource Directory of 100 organizations handling problems that would very likely have headed for the courts—or nowhere at all—a few years ago. The organizations range from Call for Action, a group of radio and television stations offering help with consumer complaints, to Western Network, a private organization in New Mexico that mediates water-management and land-use disputes, and the Children's Hearings Project in Cambridge, Massachusetts, which handles conflicts between adolescents and their parents.

Few of the listed organizations are more than five years old, but there is one very important exception to the rule—the grande dame of private dispute resolution, the American Arbitration Association.

But in its maturity the AAA, funded mainly by fees for services and by dues and contributions from more than 5,000 members, has greatly expanded upon its original purpose. Commercial disputes weren't even a fourth of the nearly 40,000 cases the organization took last year. Today, the AAA also handles interpersonal disputes, labor-management problems, and uninsured-motorist claims. It also puts out eight periodicals, maintains a research institute, trains arbitrators, and tallies upwards of a million votes every year in elections conducted for private organizations. And it's even taking on a few mediation cases lately.

But arbitration—a procedure in which a neutral third party hears both sides,

then independently comes up with a binding solution—is still how the AAA usually does things, and it is one of the most common ADR mechanisms. An indication of arbitration's wide acceptance is that 47 states, the District of Columbia, and the federal government all have arbitration statutes, most of which recognize arbitrated resolutions as enforceable contracts that can almost never be appealed in court.

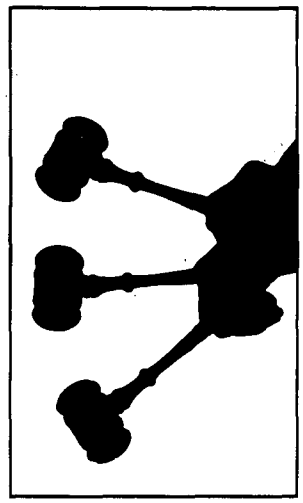
But arbitration and the AAA are by no means the only ADR show in town. Not all disputants want or need a third party with the power of an arbitrator. Larry Ray of the American Bar Association's Special Committee on Dispute Resolution notes that other ADR methods include: *direct negotiation*, which dispenses with a neutral third party altogether; *conciliation*, whereby the third party is merely a conveyor of information between disputants; and *mediation*, in which the mediator's role is essentially to guide the flow of information and make suggestions, while the disputants themselves arrive at a solution (and unlike arbitration, the outcome is usually not considered legally binding).

These distinctions among types of ADR are logical enough. In real life, though, there are now many creative combinations and mutations of them.

Perhaps the least court-like alternative to the courts is to be found in San Francisco. There, in 25 neighborhoods, Community Boards provide an informal apparatus for San Franciscans to solve conflicts with the help of their neighbors. They're a "deceptively simple" operation, as syndicated columnist Neal Peirce has observed. And there is no convenient label with which they can be tagged.

In a recent interview, Community Boards founder Ray Shonholtz listed the sort of differences handled by the Boards: "landlord-tenant disputes, merchant-consumer disputes, neighborhood harassment problems, gay versus Hispanic conflicts, arguments between roommates, neighbors opposed to a high school's off-campus policy." A law professor and still the president of the organization, Shonholtz explained that the Boards act as "third parties who intervene in a conflict before the legal system gets involved."

Since Community Boards got off the ground in 1977, hundreds of volunteers—some doctors and lawyers, others without high-school degrees—have been trained by the Boards organization in basic communication and problem-solving skills. This pool of volunteers, currently numbering about 380, is drawn on



You, Too, Can Stay Out of Court

A few years ago, a *New York Times* editorial called California's "rent a judge" system a "quick, secluded, efficient—and repugnant" alternative to ending up in court. Why repugnant? Because, the paper said, private alternative dispute resolution (ADR) undermines the concept of "an egalitarian society." The only people who would use ADR, the *Times* suggested, are the superrich.

But in Ira Gershwin's words, it ain't necessarily so. When it comes to elitism, the legal system is no great shakes, with an estimated one percent of the population getting 95 percent of the legal services. More important, though, private ADR in one form or another is available for nearly every pocketbook. If you're currently embroiled in a conflict of some sort, there may be an ADR just right for you, but you should keep a few guidelines in mind.

First, *the more equal you and your adversary are, the better.* The chances of working out a problem with an ADR are often higher if the dispute is between a neighbor and a neighbor, a married couple where one partner hasn't been emotionally dominant, two large corporations, or two small businesses.

Both advocates and critics of various ADR methods say so. James Henry of the Center for Public Resources, who has seen several corporate mini-trials first-hand, says that one of the criteria for a good one is "reasonable parity of power between the two parties, such as between two corporations of equal size." And anthropologist Laura Nader, who is skeptical of some ADR, warns that "disputes between people of unequal power are unlikely to be settled fairly by mediation or arbitration unless the force of law is available as a last resort."

This, however, is not a hard-and-fast rule, and there are often ways around it if you're savvy. For example, if you're a lone consumer up against a corporation, you might write a letter to your local TV or newspaper consumer hotline. Making the letter interesting and mentioning any odd twists to the case can help get the media's attention, which can be astonishingly effective in spurring corporate cooperation.

Second, *try an ADR only when you're sure that both you and your adversary really want to solve the conflict.* If either side has an interest in prolonging a resolution of the dispute, getting revenge, spending large amounts of money on lawyers (which, incidentally, is often tax-deductible for businesses), setting a legal precedent, or defending a personal principle at any cost, that's fine. The courts are most suitable. ADR is for something altogether different.

Third, *choose the neutral third party carefully.* Los Angeles mediator Joel Edelman, who has handled all sorts of cases, suggests that people looking for a divorce mediator should interview at least two or three candidates (paying for their time) before choosing one. That's true in any

(Continued on page 27)

for panels that help disputants work out their conflicts. Volunteering for Community Boards isn't a casual commitment: in addition to 26 hours of training, a typical panelist devotes about 125 hours annually to the organization. Community members can avail themselves of the service for free.

Putting a panel together (there are usually three to five members) is something of an art. The members usually come from the same neighborhood as the disputants. Moreover, in a dispute between, say, a Chinese and a Hispanic, the Boards would try hard to recruit at least one Chinese panelist and one Hispanic panelist.

Virgilio and Matilda Razzo: A neighbor's barking dog was driving them up a tree.

It was to Community Boards that Virgilio and Matilda Razzo, who live in the Visitacion Valley area of San Francisco, took the problem of the barking dog this spring. "We have a hill in back of our house," Mrs. Razzo recently explained, "and we'd heard the dog barking night and day. We couldn't see exactly where it was coming from because of trees blocking the view, but for five years we'd heard the barking."

Finally, after finding out the address where the dog was located, Mrs. Razzo recounted, she sent a letter of complaint to the owner. She received no response. She called the Society for the Prevention of Cruelty to Animals and the police, both also to no avail.

It was then that she called Community Boards. "I'd heard about them," she said. "They'd distributed flyers around the neighborhood saying they were available."

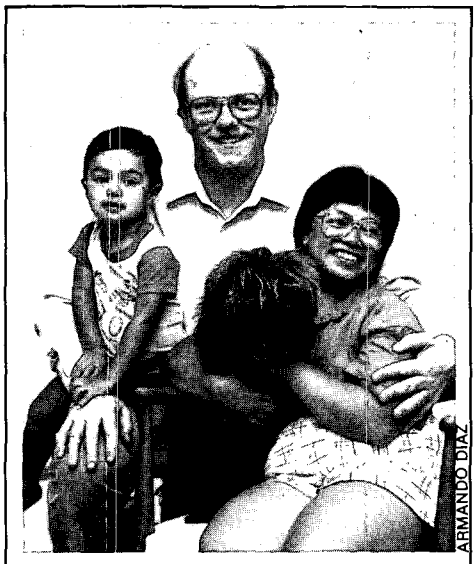
The first step the Boards organization takes after receiving a complaint, according to Shonholtz, is to have a "case developer" visit both sides at home to determine whether a meeting would help. "That's enough by itself," he noted, "to solve about a third of the complaints we handle."

In this instance, the owners of the dog were a couple named John and Maria Arnott. The case developer happened to be Mr. Arnott's sister, and it was she who first told Ms. Arnott about the complaint.

"My sister-in-law said, 'Look, someone's complaining about your dog,' " she later recalled. "We didn't know that our dog was causing a problem, and our attitude was, 'Sure, we'll be happy to talk to them.' "

From time to time, the meeting with a Community Boards panel becomes quite heated. This did not. "They were very good about working it out," said Mrs. Razzo. And Ms. Arnott recalled, "I didn't feel any animosity or tension at the meeting. The panel was trying to figure out how to solve the problem. They asked if there are any other dogs around the neighborhood, and they asked what our schedules are—when we get back from work and when Mr. Razzo is at home—and they suggested some things we should try."

In the end, they put together an agreement signed by Virgilio Razzo and John Arnott. The Arnotts would move the dog house to a lower level and keep the dog where it wouldn't bother the Razzos. Mr. Razzo agreed that he or his wife would call right away if the dog's barking bothered them again. And the Arnotts would check with the Razzos later to make sure that the barking problem was ended.



The Arnotts and their dog: With the Community Boards' help, a neighborhood dispute was resolved.

"The day after the meeting," Mrs. Razzo recounted a few weeks later, "we didn't hear any barking. We haven't needed to call, because the dog barks only once in a great while, and it's just for a few minutes. It's like a miracle."

One of the three panel members was Ben Goodman, a retired utility official and a veteran of Community Boards panels. "We panelists try to set the stage so that both sides will think of each other as humans, not opponents," he explained. "We try to see what they have in common—maybe they both have kids going to the same school, or whatever."

Goodman figures it's important for the panelists "to be at ease and not think of it as 'downtown law.' " And ground rules are spelled out. "The first is that both sides should treat each other with respect. The second is, don't interrupt anyone when they're speaking, because you'll have an opportunity to tell your side. Then, in this case, we said to Mr. Razzo, 'Please tell Mr. Arnott how you felt at night when the dog kept you up.' That kind of thing can help."

Not incidentally, Mrs. Razzo is now an ardent Community Boards booster. "About 80 percent of the cases I've seen end this way," said panelist Goodman with obvious satisfaction. "It can be very wrenching with some of the disputes, but it can be very gratifying. That's why I'm in it."

There was a time when many, if not most, lawyers were repulsed by the idea of private dispute resolution. During an American Bar Association debate in 1919, an overoxygenated Massachusetts lawyer even implied ominous parallels between contractual arbitration and the Bolshevik revolution in the Soviet Union—"where they have taken the lawyers and put them out to work in the fields and factories, where they have closed down the courts."

Some of his successors in the law feel a bit less threatened. They have noticed that there's a growing demand for efficient, inexpensive dispute resolution—and they've also noticed that there are more than a few disputants who are willing and able to pay well for it. Streamlined private dispute resolution is not the kind of thing that attorneys are usually trained for, but many have been learning quickly.

In California, for example, lawyer-

entrepreneurs and retired judges are offering "rent-a-judge" services, in which they render legally binding but appealable decisions. The state has a law dating back to 1872 that allows for such services ("general references," as the law calls them), but it's only in the last few years that the practice has flourished, as typical court delays have grown.

Among the more famous California rent-a-judge cases is the divorce of est founder Werner Erhard, which began last year and was still continuing as of June. The law permits general references in any civil (noncriminal) case, and the hired judge doesn't even have to be a lawyer.

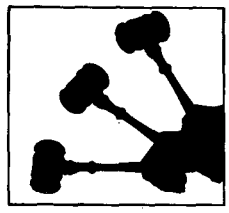
California isn't alone: at least 10 other states have some rent-a-judge provisions in their laws. But this is hardly the ceiling on opportunity for entrepreneurial lawyers. Several are setting up full-fledged dispute-resolution businesses, rent-a-judge laws or no. Jonathan Marks of Washington, D.C., is one of those lawyers.

Marks comes to his current endeavor by way of the *Harvard Law Review*, of which he was president while in law school; the District of Columbia, where he served as a federal prosecutor; and then the high-powered Los Angeles law firm of Munger, Tolles & Rickerhauser. He and a Munger, Tolles colleague, Eric Green, were working eight years ago on a complicated patent case for TRW, a technology conglomerate that was embroiled in a conflict with another company, Telecredit. The case promised to be protracted and expensive.

Exasperated executives on both sides concluded that there must be a better way of handling the problem, so they improvised. They set up a private two-day hearing, with a neutral adviser present, at which lawyers for both sides presented summaries of their cases to executives of both companies. Marks recalls that it wasn't even an hour after all the arguments were ended before the executives from TRW and Telecredit had worked out an agreement. In the process, they jointly saved an estimated million dollars in legal costs.

The concoction was dubbed a "mini-trial." Was it an entirely new idea? Maybe so, maybe not. "It's conceivable that there were mini-trials in the past, but they were never identified as such," says James Henry of the New York-based Center for Public Resources, which promotes and conducts mini-trials.

Marks and his friend Green (today a Boston University law professor) knew a good thing when they saw it. They soon



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case when there's a lot at stake, economically or emotionally. Alternative dispute resolution is a largely unregulated market, which means that there's no bar association or similar creature even purporting to protect you from incompetence or fraud.

And make sure the third party is neutral. If you're a consumer in a brouhaha with either a company or a lawyer, CPA, or other professional, don't forget that industry-sponsored organizations like the Better Business Bureau (BBB) and professional groups like the bar association are funded by one side in the dispute, and that side isn't yours.

Law professor Richard Abel points out that the BBB in particular has "little enforcement power and doesn't offer many meaningful remedies." As for professional organizations such as bar associations and medical associations, he notes, "their complaint processes are lengthy, they're secretive, and after someone has put in all the time and effort to go through the process, they usually impose very mild punishment, if any at all."

Finally, *if you need a lawyer, hire a lawyer.* Before you agree to any settlement involving something valuable and important to you, check it out with an attorney. Even if you agree with Mormon leader Brigham Young that lawyers are like "a stink in the nostrils," hold your nose and go see a competent one. It could save you a lot of problems later.

What *kind* of ADR you choose often depends on your problem.

If you have a landlord-tenant problem, housemate hassles, noisy neighbors, or other problems of the sort, and you can't spend a lot of money, "community boards" are your ADR of choice. Fortunately, you don't have to live in San Francisco to use them. At this writing, San Francisco's pioneering *Community Boards* has spawned similar organizations in six other cities and four American Indian communities in various parts of the country, and six more are in the offing. To find out if there are community boards where you live, contact the San Francisco office at 415/552-1250, or 149 Ninth St., San Francisco, CA 94103. (If there is no community board in your area but you'd like to start one, tell them).

If you and your adversary don't trust or like each other and there's not a big chance that either will need a continuing relationship with the other, you'll probably want a resolution that's legally enforceable and not appealable in court. Arbitration may be for you, so contact the *American Arbitration Association.* If you're in a big city, it's likely that they're in your phone book. If not, get in touch with their national office (140 West 51st, New York, NY 10020; 212/484-4000) and tell them where you are and what you need. In the last three years, the AAA has been delving into mediation, so you might want to ask about that, as well.

If you and your spouse want a divorce and hope it will be slightly less harrowing than the Hundred Years' War, there are a couple of national organizations that can give you referrals to local mediators. These are the *Academy of Family Mediators* (P.O. Box 4686, Greenwich, CT 06830; 203/629-8049) and *Association of Family and Conciliation Courts* (Psychiatry Dept., Oregon Health Sciences University, 3181 S.W. Sam Jackson Park Rd., Portland, OR 97201; 503/220-5651).

If you're in business and getting heartburn because of avoidable conflicts, mini-trials may be your way out. If you want one of the top lawyers in the land and will pay well for his or her services, get in touch with the Center for Public Resources at 860 Fifth Ave., New York, NY 10010; 212/541-9830. If your needs are more modest, try a firm like EnDispute. They're in four cities, but their main office is 1333 H St., NW, Suite 460, Washington, DC 20005; 202/898-0146. Other dispute-resolving firms include *Civicourt* (505 N. Second, Phoenix, AZ 85004; 602/252-4802); *Judicate* (1608 Walnut, Suite 1200, Philadelphia, PA 19103; 215/546-6200); and *Dispute Resolution, Inc.* (179 Allyn, Suite 508, Hartford, CT 06103; 203/724-0861).

Finally, the directory of ADR mechanisms put out by the *National Institute for Dispute Resolution* (1901 L St., NW, Washington, DC 20036; 202/466-4764) probably has a listing for you if you have a dispute involving something more arcane—say giraffe hygiene, cubist sculpture, or polyandry.

—P. G.

formed a small company called EnDispute to arrange and conduct mini-trials not only in corporate disputes but also in simpler situations such as uninsured-motorist cases. Today, EnDispute has offices in Washington, Los Angeles, Chicago, and Boston, and the mini-trial is only one of its services.

For fees that are calculated at $150 to $250 an hour and usually come to a minimum of about $800, EnDispute will set up and conduct a mini-trial, provide neutral analysis, arrange a voluntary-settlement conference or arbitration, or work out another mode of dispute resolution suitable for the occasion. If need be, they'll conduct a management audit of a company to see how it can reduce the cost of its disputes. Or they'll provide any number of other consultant services.

Others are running the trail blazed by EnDispute, including Dispute Resolution in Hartford, Judicate in Philadelphia, Civicourt in Phoenix, and a handful of small firms, often with a single retired judge, in California. Since the TRW-Telecredit resolution in 1977, mini-trials facilitated by various enterprises have led to the settlement of a multi-million-dollar contract case between Wisconsin Electric and American Can Company; a $10-million liability claim against the Insurance Company of North America; a case brought by Gillette involving theft of trade secrets; and others.

Some of the biggest of the corporate mini-trials have been conducted by the Center for Public Resources, a nonprofit organization with a dues-paying membership. CPR's Judicial Panel—a roster of attorneys and legal scholars who can be hired to preside at mini-trials—includes former attorneys general Elliot Richardson and Griffin Bell, former Yale Law School dean Harry Wellington, and others of their stature. In addition to spreading the idea that the mini-trial is a sensible and useful mechanism, the Center acts, in president James Henry's words, as "a non-profit R&D effort to build the state of the art."

Walter Kocher, vice-president and general counsel of the Borden Corporation, knows from first-hand experience how a CPR mini-trial works. His company settled a $200-million antitrust dispute with Texaco because of one.

Borden had filed a complaint in federal court in May 1980. "The case started out according to normal procedure," Kocher recalled recently in an interview. "Hundreds of thousands of pages were turned over by both sides. After we'd been in the case for more than two years, we were preparing for trial when, in a discussion between attorneys for both sides, it was suggested that we both try to resolve the case with a mini-trial. Both attorneys were members of CPR at the time, so they were familiar with it."

CPR's Henry later wrote that the rules at the Borden-Texaco mini-trial were simple: attorneys for both sides would make presentations to executive vice-presidents of both companies; the presentations would be on neutral ground (a private club in New York); and the attorney for each side would have an hour to make his presentation, plus time for rebuttal.

Some shrewd, creative people are coming up with ways to opt out of a tottering legal system that's not doing its job well at all.

It worked. The meeting took less than four hours altogether. After "sometimes difficult" discussions between Borden and Texaco executives over the next two months, a solution was hammered out: no money changed hands, but they did negotiate a new gas-supply contract that hadn't even been an issue in the case. It was greeted by both parties "as a win-win settlement," observed Henry.

If private dispute resolution has any emblem of success, it is the win-win settlement. In divorce cases, where the emotional stakes are usually more substantial than in an antitrust dispute or a problem with a barking dog, the possibility of both sides winning can be especially appealing.

That's essentially why Karyn and Don Souther, a Los Angeles-area couple, went to a mediator when they decided to get divorced. "To have two lawyers would have been distasteful to us," Karyn Souther explained. "If you don't have a lot of difficulties already, a lot are created for you with the adversarial relationship in the divorce courts."

The Southers' family therapist recommended that they use the services of mediator Joel Edelman, an attorney and adjunct law professor at the University of Southern California and Loyola University. After Edelman had spoken to both of them on the phone, their first meeting was set up.

"In the first meeting," Mr. Souther recalls, "Joel explained his role. He told us he wasn't there to represent one side or another—he was there to help us decide the things we needed to decide. And he asked us why we wanted to divorce."

The second session was far more difficult. "It was long and drawn out," according to Ms. Souther. "During part of the session, I felt that Joel was favoring my husband, and I brought that up. It was a tough session. In the third session, though, the two of us came to an agreement. Don and I actually worked out part of it while Joel was taking a phone call." The third session was their last.

The agreement that the Southers and Edelman worked out is somewhat unconventional—not the kind of settlement that normally comes out of divorce court. "There were so many trade-offs they made that only they knew the reasons for, and no judge ever would," Edelman said. One of their two daughters is to live with her grandmother in Sacramento, while the other will live part-time with each parent. Ms. Souther is paying Mr. Souther child support, and although he is not providing any money for her to continue her education—as many courts might well have ordered—he is buying out of her share of a jointly owned house.

It's not at all clear how many couples are like the Southers in that mediation can make their divorces easier and less painful. Edelman believes the Southers' divorce went as smoothly as it did because they "were a couple who had a great ability to understand each other and communicate with each other." In his experience, "Mediation works best when the people are basically sane and no one's off the wall—and neither one wants to get the other, emotionally or financially."

Edelman's experience with mediation goes back to 1969 during the Columbia University student strikes. He was on loan from the Rand Corporation (a California "think tank") to the New York Police Department when a police executive learned that Edelman was a graduate of Columbia. "Next thing I knew," Edelman recounted recently, "I was

mediating the Columbia student strike and getting hooked on it—as if mediation was one of those rare novels you just can't put down once you've started reading it."

Eight years later, the Los Angeles County Bar Association "drafted" him to set up a Neighborhood Justice Center. The first mediation center in Southern California, it started with "not many standards to speak of except common decency, common sense, and uncommon organizational curiosity," he wrote.

"For me," observed Edelman, "mediation has been life-affirming, all-encompassing, fulfilling, and rewarding. On all levels." These days, he is teaching mediation to law students in Southern California, running small divorce-mediation workshops, and working as a mediator in Santa Monica, frequently with couples like the Southers.

While observers agree that divorce mediation is no cure-all, nor will it work for everyone, it is a growing alternative to often bitter and unsatisfactory court battles over custody and property. No one seems to have tallied how many people are turning to divorce mediation, but there are already several organizations serving the growing market.

An obvious question is whether private dispute resolution is better than the judicial system. Turning up an answer to that is not so easy, though, for several reasons.

First, ADR comes in so many sizes and shapes as to be virtually uncountable.

JON BARBER

Besides arbitration, mini-trials, for-hire judges, and mediation, there are media-sponsored consumer hot lines, Better Business Bureau complaint resolution, industry-sponsored groups handling complaints for a single industry (such as autos), and numerous others.

Second, private ADR and litigation don't compare on many qualities. As Richard Abel, a law professor at the University of California at Los Angeles, has pointed out, informal ways of processing disputes aren't bureaucratic in the way that the legal system is, and they're not set apart from the larger society like the courts are. He describes ADR as "vague, unwritten, commonsensical, flexible, ad hoc, and particularistic." Those features sound just fine to a lot of people, while others are satisfied and secure with bureaucracy, the rule of law, precedent, and due process.

Breaking up can be a little less hard to do with mediators such as Joel Edelman (center), who helped Karyn and Don Souther work out an amicable divorce settlement.

And while anecdotes about ADR are a dime a dozen—and many of them do ring true—there's very little good hard data about it. That's partly because many of the ADR methods are themselves so new and informal. But it's also because even established and fairly formal institutions like the American Arbitration Association carefully protect the confidentiality of their cases.

This is not to the liking of some observers. A search through the ADR literature turned up, for example, the worries of Berkeley anthropologist Laura Nader. At a conference several years ago, she recounted how AAA officials "weren't about to let us come in"

for an external review of the organization's track record. "The reason they gave had to do with confidentiality," Nader relayed dubiously. "They said they had to protect the consumer." Earlier, in a *Yale Law Journal* article, Nader had suggested that it would be advantageous if public and private mediation and arbitration agencies were required to open their case files for public inspection.

The fact is, of course, that confidentiality can be a real blessing for disputants (no doubt many litigants have yearned for more privacy than the courts usually allow) and something they have a right to preserve. But the same confidentiality means that it can be difficult for consumers—and reporters—to check out the record of an ADR service or compare ADR to the traditional court system.

And yet, some comparisons are possible. For example, there's good reason to think that much of the time, private ADR is cheaper than litigation.

Take arbitration, which is quite similar in structure to what the courts do—so much so that it qualifies for being dubbed a "private court" if anything does. After all, arbitration usually entails an adversarial presentation before a neutral third party; the arbitrator renders a binding (and very judge-like) decision that's enforceable in the "real" courts; and in most arbitrated cases (at least the ones that the AAA handles) both parties have their lawyers with them. Yet, even though arbitration replicates the courts in so many ways, savings can often be realized by going to arbitration.

Herbert Kritzer is a political scientist

at the University of Wisconsin, where the prestigious Disputes Processing Research Program has been examining the court system and ADR for eight years. He and Jill Anderson Dean, formerly at the University of Wisconsin and now an attorney in Alaska, compared 755 tort (wrongful act) and contract cases that went through the federal or state courts with 147 similar cases handled by the AAA. Their study is considered the best independent comparison available. They found that on average, legal expenses were higher in AAA cases when the stakes in the case were over $5,000; but when the stakes were less, the AAA was the more economical way to go.

But that's arbitration. Discussion with various people involved suggests that the farther a private ADR moves from the traditional court model, the greater the chance of saving money. The typical mini-trial, for example, is enormously simpler and more informal than the complex litigation that it is intended to replace. While independent data on mini-trials is virtually nonexistent, James Henry of the CPR cites an estimate that a successful mini-trial can result in savings of as much as 90 percent on legal costs.

In recalling the Borden-Texaco mini-trial, Borden counsel Walter Kocher figures that if it hadn't taken place, "you could have expected four to six years of additional litigation. There was so much at stake that neither side would have accepted a negative decision until all the avenues for appeal had been exhausted." And the cost? "Millions of dollars. Let's face it—when you get lawyers and very competent technical people, you pay by the hour, and the hours add up."

It's possible that mini-trials haven't yet reached their full potential. Former Attorney General Griffin Bell, who now practices law in Atlanta and is available for hire through the Center for Public Resources to conduct mini-trials, believes that the day may come when mini-trials or similar ADR mechanisms will be a way to save even more in legal costs, not to mention time and energy. "Where there are thousands of cases against one company, such as in the asbestos litigation and the Dalkon Shield cases, there's got to be some way to marshal all these cases in one place," he observed when interviewed. "It would work well if there were 5,000 cases around the country that could be brought together, but we're not there yet."

For an entirely different kind of dispute, the kind that the Community Boards handle in San Francisco, one can't even begin to compare disputants' costs with what they'd have to invest in litigation. When they go to Community Boards, it doesn't cost them anything. The Boards organization itself doesn't charge them; there's no reason to pay for attorneys, because Boards rules are that an attorney can't participate in a case unless he or she is a disputant; and all the panel members are unpaid volunteers. Virtually the only expenses in the whole Community Boards system—which, so far, has been funded entirely by private contributions—are for a small staff and rent for an administrative office and three storefronts around San Francisco.

Overall, observes Bowdoin College sociologist Craig McEwen, who's sympathetic to ADR, its purported cost advantage isn't proven. But the reliable evidence that's available does suggest that much of the time, ADR is a lot cheaper than litigation.

When it comes to speed in processing disputes, however, the advantage of ADR is much less ambiguous. By and large, the innovative private alternatives are considerably faster than the courts.

When Herbert Kritzer and Jill Anderson Dean compared court cases with AAA cases in five parts of the country, they found that in one area, the AAA was "appreciably faster" for contract cases but not torts; in a second area, the AAA and the court "had similar patterns"; but in three areas, the AAA is "clearly faster." Moreover, Kritzer and Dean noted that the AAA's speed advantage overall might have been even larger if they'd been able to carry out their technical analysis further.

Speed seems to be a hallmark of nearly every private dispute resolution proceeding. Mini-trials, when they're successful, reportedly take days or at most weeks to resolve cases that have sometimes been festering for years and typically would take years more in the courts. The four-hour meeting and two months of negotiations that led to a resolution of the Borden-Texaco conflict was, according to Center for Public Resources spokesperson Anne Glauber, somewhat longer than with the usual mini-trial.

In a divorce like the Southers', there's no way of knowing how long it would have taken if they had gone through the courts, even in a "no-fault divorce" state like California. But in the event, it took only three sessions with Edelman, each lasting only a few hours. He then drew up the divorce papers and sent them to Karyn and Don Souther for their approval. The only delay now is in the court system itself: the Southers are in the middle of a mandatory waiting period before the divorce is made final.

It's not so surprising that a mode of dispute resolution vastly different from the legal system—the Community Boards—is also one of the quickest. Usually, when the organization takes a dispute, both sides and the panel of neighbors gather on a free evening in a Boards storefront or a church basement, set up some folding chairs, talk, and put an agreement in writing before the evening is done. Precious few courts, including those handling the simplest of cases, could boast of doing nearly as well.

There's no question about the fact that alternative dispute resolution offers an appealing way out of a creaky legal system. But it would be a mistake to think that they exist in some vacuum completely independent of the system. They don't.

Almost everywhere, arbitration decisions are legally enforceable—and enforced when necessary—in the courts. The results of mediation, such as in the Southers' divorce, often need the imprimatur of the state to carry any weight. For mini-trials, it's often the same story.

Even the Community Boards group has a close working relationship with local government officials, including the San Francisco police. They "have a good reputation here," Lt. Tim Thorsen, the head of the San Francisco Police Department's Community Service Division, said in an interview. "I've had them to staff meetings, and the Police Department has referred cases to them."

So alternative dispute resolution mechanisms don't function in a stateless society, and the ones that thrive reflect that fact in various ways. But at the same time, they're quietly making news so obvious that it's easy to overlook. It is this: some shrewd, occasionally visionary, usually creative people are coming up with ways to opt out of a tottering legal system that's not doing its job well at all. They're not doing it because they want to erode the government's old monopoly on dispute resolution. They just want to meet people's need to work out conflicts, and several are doing just fine at it. As the Razzos and the Arnotts, the Southers, Walter Kocher, and anyone who's had the misfortune of spending even a week in court would probably attest, that is an impressive accomplishment. ◻

Assistant Editor Paul Gordon is not a lawyer. This article is a project of the Reason Foundation's Investigative Journalism Fund.

LARRY CARROLL

Broadcasters in Bondage

Free speech is a fundamental right? Not when it comes to TV and radio broadcasters, it isn't—and an odd coalition of liberals and conservatives wants to keep it that way.

by Robert L. Corn

Phyllis Schlafly thinks the Fairness Doctrine, which requires broadcasters to devote a "reasonable amount of time to discussing controversial issues of public importance in their communities" and to do so in a balanced manner, is a good idea. Earlier this year, in a series of round-table discussions on the doctrine at the Federal Communications Commission (FCC), Schlafly, the nemesis of the equal rights amendment and all other liberal causes, advocated the continued use of big government "to serve as a small restraint on the monopoly power wielded by Big TV Media."

When it comes to avowed conservatives supporting federal regulations to curb perceived abuses of the broadcast media, Schlafly is not alone. The American Legal Foundation (ALF), a conservative public-interest law firm, and Accuracy in Media (AIM), an organization devoted to overseeing news coverage by broadcasters, both filed similar comments in recent FCC hearings on the Fairness Doctrine.

These groups, curiously, have found allies for this cause in a number of liberal organizations. The American Civil Liberties Union (ACLU), the United Church of Christ, the National Association for the Advancement of Colored People (NAACP), Media Access Project, Telecommunications Research & Action Center, and the Democratic National Committee, among others, all have filed comments with the FCC that strongly support the Fairness Doctrine. Indeed, as Commissioner James Quello remarked at the hearings, with apologies to Schlafly, "politics makes strange bedfellows."

Since speakers' positions at the hearings apparently were not preordained by ideological orientation, it was often difficult to predict who would support the Fairness Doctrine and who would oppose it. In short, it was hard to tell the players without a scorecard. But as the two days of hearings drew to a close the breakdown became more definite. Most, although not all, constitutional scholars and practicing journalists opposed the doctrine. It was supported principally by groups with a political axe to grind. The doctrine's proponents, it appeared, were united not by outlook but by pragmatic considerations—an alliance of those who advocate the use of federal power to force broadcasters to air *their* version of the truth.

The commission initiated its investigation into the continuing validity of the Fairness Doctrine in 1983 in order to determine "if any substantial possibility exists that the rules have impeded, rather than furthered, First Amendment

objectives." If the doctrine has infringed the free-speech and -press rights of broadcasters, said the FCC notice of inquiry, "repeal may be warranted on that ground alone." Another issue raised by the inquiry is whether the Fairness Doctrine is merely a commission policy or was created by an act of Congress.

Those uninitiated in the mysteries of broadcast regulation may consider the answers to such questions obvious. After all, the First Amendment to the US Constitution says that "Congress shall make no law...abridging freedom of speech or of the press...." How, then, can regulations that restrict the freedom of television and radio journalists possibly further "First Amendment objectives," regardless of whether they were adopted by Congress or created by the commission?

The traditional answer to this question is that the number of available broadcast frequencies is limited and therefore must be rationed by the government. In exchange for a broadcast license, the station owner must make his station available for the presentation of contrasting viewpoints on controversial issues of public importance. Otherwise, according to this theory, those who gain control over this scarce resource would monopolize the marketplace of ideas. Therefore, the FCC has the job of regulating the airwaves in order to keep them free.

This theory was elevated to constitutional status in 1969 in the landmark Supreme Court case *Red Lion Broadcasting Co.* v. *FCC.* The court endorsed the Fairness Doctrine with the oft-quoted remark: "It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." Still, the court recognized as "a serious matter" the possibility that broadcasters would limit their coverage of controversial issues and engage in self-censorship to avoid trouble with the FCC. "If experience with the administration of these doctrines indicates that they have the net effect of reducing rather than enhancing the volume and quality of coverage," the court concluded, "there will be time enough to reconsider the constitutional implications."

The time for reconsideration clearly has arrived. Broadcasting is hardly the scarce resource it was in the 1940s when the Fairness Doctrine was conceived. Radio and television stations now outnumber daily newspapers by more than five to one. New technologies, from videocassette recorders (VCRs) and cable television to satellite delivery systems, have revolutionized the electronic-media marketplace, making it increasingly unlikely that anyone could corner the information market.

Even the Supreme Court has acknowledged that it may be time to take a second look at the constitutionality of the Fairness Doctrine. In a 1984 League of Women Voters case, which struck down a ban on broadcast editorials by public radio and television stations, the court took note of the FCC's Fairness Doctrine inquiry. Although Justice William Brennan, writing for the court, expressed no opinion on the legality of a commission decision to repeal or modify the doctrine, he added that if the FCC found that the rules inhibit speech, "we would then be forced to reconsider the constitutional basis of our decision in [*Red Lion*]."

Against this backdrop, the FCC, headed by Chairman Mark Fowler, has been attempting to strip away many of the regulations encumbering broadcasters. Among other things, he has proposed "a marketplace approach to broadcast regulation," in which the electronic media would be accorded the same constitutional status as those who ply their trade in print. The Fairness Doctrine hearings are part of this overall review of existing regulations.

This philosophical orientation has won Fowler few friends on the left or on the right. Some liberals have branded him the "mad monk of deregulation," the "James Watt of telecommunications." Many conservatives are no happier with Fowler. The *AIM Report,* published by the conservative group Accuracy in Media, grumbled that "the Reagan appointees to the FCC have been openly campaigning to abolish the Fairness Doctrine, and they have summarily rejected virtually every serious fairness complaint that has come before them, no matter how solidly documented. This is a reflection of the libertarian philosophy of FCC Chairman Mark Fowler...." Phyllis Schlafly echoed this concern, claiming that once Fowler's views on the Fairness Doctrine became known, "the outrageous and blatant anti-Reagan bias of the TV network newscasts accelerated rapidly...."

Critics from both ends of the political spectrum appear to agree that without the Fairness Doctrine, someone will end up controlling the airwaves—that is, someone other than themselves. Liberals see the specter of corporate power corrupting the marketplace of ideas. Andrew Schwartzman of Media Access Project has asserted that corporate free speech will come at the expense of the rights of individuals. Or, as Pat Aufderheide asked in the left-liberal

Will Congress Play Fair?

As of this writing, the Federal Communications Commission (FCC) has yet to issue a decision in its Fairness Doctrine inquiry. But informed sources both inside and outside the commission predict that before summer ends it will rule that it lacks authority to change the doctrine. The five commissioners are expected to conclude that Congress has sanctioned the fairness rules and that the commission, as an agency of the legislative branch, is powerless to repeal them. According to the anticipated commission findings, if the Fairness Doctrine is to be rescinded, Congress must act.

Congress, however, is an unlikely candidate for this task. That body has shown little enthusiasm for recognizing full First Amendment rights for broadcasters. In fact, it has been actively hostile to the idea.

The Senate Commerce Committee last year killed a bill sponsored by Sen. Robert Packwood (R-Ore.) that would have eliminated broadcast-content controls. This year's committee chairman, Sen. Jack Danforth (R-Mo.), recently proposed a "clean campaign act," which would require broadcasters and cable operators to provide free air time for candidates to respond to "negative ads" aired by their opponents.

If passed, the Danforth bill would put broadcasters even more at the mercy of politicians, since federal law already requires licensees to provide a "reasonable" amount of air time for candidates for federal office—at stations' lowest unit rate for advertising—yet denies stations any control over the content of political ads. The new bill would go the extra step of forcing broadcasters to give free time for candidates to respond to the cut-rate ads the stations were compelled to air in the first place.

Even though Congress may not be the answer, the FCC's Fairness Doctrine inquiry may not have been futile. The commission is also expected to find that the regulations do inhibit broadcast speech by discouraging controversial programming. Such a finding could provide the necessary support for a successful court challenge to the doctrine's constitutionality. The Supreme Court last year expressed its willingness to revisit the issue if the FCC were to conclude that the Fairness Doctrine chills free expression of ideas. **—R.L.C.**

weekly journal *The Nation*, "Whose First Amendment is it, anyway—the corporations' or the people's?" Conservatives are haunted by a more specific vision—liberal network bias. Hostility toward network news is the dominant theme in right-wing support of the the Fairness Doctrine.

Conservative groups have mounted assaults on several fronts to combat what they perceive to be slanted reporting by the networks. Sen. Jesse Helms recently created an organization dubbed "Fairness in Media," whose sole purpose is to encourage politically minded investors to buy CBS Television. The goal: to become "Dan Rather's boss" and presumably to tell him to stop spewing all that liberal hogwash, or else. The American Legal Foundation and other "public interest law firms" have taken a more direct approach. They have funded libel suits against a wide range of media defendants. Perhaps the most notable example was the ill-fated suit by General William Westmoreland against CBS—which, incidentally, was dropped after the general's subordinates testified that the CBS broadcast was substantially correct. These groups also have filed a series of Fairness Doctrine complaints at the FCC as part of this effort.

Organizations on both the left and the right dismiss the notion that the Fairness Doctrine inhibits broadcast journalism. Or, rather, liberals deny any chilling effect, while conservatives seem to be saying that the media could use a little inhibiting. Both sides base their arguments on faulty premises.

Conservative paranoia over network power seems oddly out of place given the political developments of the past five years. Phyllis Schlafly testified at the FCC that "a review of 10 years of network coverage of the equal rights amendment showed that the coverage was loaded 95-5 in favor of the ERA." She and others argue that the media have been wildly anti-Reagan. Even if true, it is hard to get too worked up over such claims—the networks obviously lacked the power to sustain the ERA or to keep Ronald Reagan from enjoying an overwhelming landslide.

Those who fear network bias have also chosen the wrong weapon. The Fairness Doctrine (and all other FCC content regulations, for that matter) operates against individual broadcasting stations, not networks. Granted, networks can be pressured through the handful of stations they own and operate. But if anyone can afford protracted legal battles over their programming, it is the networks and their stations—CBS, for instance, spent several million dollars in defending itself against the Westmoreland suit. It is smaller operations that are chilled, since often they can afford neither the Washington counsel nor the diversion of resources necessary to combat the special interests who use the Fairness Doctrine to launch costly legal attacks on broadcasters.

Conservatives should realize this. The Supreme Court *Red Lion* decision resulted from the refusal of an iconoclastic broadcaster in rural Pennsylvania to bow to FCC pressure to air a response to personal attacks made on a liberal writer. The station toed a staunchly conservative line before the Supreme Court test. Afterward, it was forced to be "balanced"—in other words, bland. The Fairness Doctrine thus has its greatest impact in stifling the development of controversial viewpoints at the grassroots level. It prevents the emergence of a broadcast counterpart to the likes of the conservative newspaper the *Manchester Union Leader*.

> The doctrine's proponents want to force broadcasters to air *their* version of the truth.

Liberals are similarly off-target when it comes to the Fairness Doctrine. Organizations such as the ACLU traditionally champion the First Amendment and thus are sensitive to claims that FCC regulations silence journalists. (Not all liberals are so sensitive. Herbert Chao Gunther of the Public Media Center, a "public interest" advertising agency, has been quoted as saying, "If corporations want the free speech rights of individuals, then they ought to be liable for capital punishment, too.") Consequently, the Fairness Doctrine is often painted as the means by which struggling political groups obtain a voice in the face of overwhelming odds. A writer for *The Nation* noted, "The Fairness Doctrine is perhaps most commonly invoked by citizens during local referendums in order to counter expensive, blanket ad campaigns by powerful interests."

Even if this could be considered a plausible characterization, however, it ignores the fact that the Fairness Doctrine's history is one of abuse. The Democratic National Committee mounted a Fairness Doctrine campaign in the mid-'60s to "inhibit the activity of...right-wing broadcasts." A confidential report to the committee stressed that the principal targets were "small rural stations...in desperate need of broadcast revenues" and that a continuing effort would force stations to drop certain programs from their broadcast schedule.

To the DNC, if not the public, the campaign was a success. Carl McIntire, an ultraconservative radio preacher and one of the primary voices the DNC sought to still, was dropped by nearly 400 radio stations. Others were silenced as well. More significantly, the campaign led directly to the test case which culminated in the *Red Lion* decision.

Such official abuse of broadcast regulations has not been limited to one side of the ideological fence. Those in power, regardless of political stripe, have used the FCC to help maintain that power. Richard Nixon reportedly threatened to hold up the licenses of Post-Newsweek stations as he became increasingly upset with the *Washington Post*'s Watergate coverage. More pointedly, the Central Intelligence Agency is currently pursuing a Fairness Doctrine complaint against ABC over the network's news report that the agency had sought to assassinate a former agent. For the first time in history, one government agency is applying to another arm of the government to censure a critical news organization. The CIA has requested that the commission impose sanctions on ABC's owned and operated stations, including the possibility of revoking their licenses.

The challenged news report involved claims by a Honolulu investment counselor that he had been a covert CIA agent and that the agency had solicited ex-prison guard Mike Barnes to kill him. The allegation was made in interviews with Barnes on the September 19-20, 1984, editions of *World News Tonight*. ABC aired the CIA's denial of the allegations and later backed off the claims, issuing a statement that the network had

been unable to corroborate the story and that Barnes had refused to take a lie-detector test.

The truth of the story remains unclear. What is certain, however, is that broadcasters will be far less willing to criticize the government when public officials who dislike a given report may file petitions to punish "offending" television stations. This new application of the Fairness Doctrine bears a sinister resemblance to "seditious libel"—the law by which colonial governors imprisoned editors brazen enough to criticize their policies.

> Those in power, regardless of political stripe, use the FCC to help maintain that power.

The ACLU and Media Access Project, realizing that the CIA complaint strikes at the very heart of First Amendment values, have filed comments with the FCC opposing it, even though both groups support the Fairness Doctrine in general. They argue that the chilling effect on journalists is greater when another government body files a petition and that the Fairness Doctrine was never intended to allow government agencies to seek sanctions against broadcasters. Perhaps they are correct. An FCC staff lawyer recently said confidentially that he pays greater attention to requests for assistance or information from other government offices.

Acknowledging that the damage to free speech is greater when initiated at the government's behest, however, is a far cry from agreeing that inhibitions advocated by private parties are constitutionally acceptable. It is just as destructive to the First Amendment for non-governmental groups to seek punishment for ABC in this case, since, in the extreme case, a complaint could endanger television station licenses. In fact, this threat currently exists.

The FCC dismissed the CIA petition in January this year, because "the allegations fail[ed] to establish prima facie complaints sufficient to initiate a Commission inquiry." However, the decision summarily rejected the idea that government agencies are barred from filing such complaints. Encouraged by this, the CIA has since renewed its petition in an effort to cure the failings in its first attempt. Also, the same day the FCC issued its decision, the conservative American Legal Foundation filed an inch-thick petition supporting the agency's claims against ABC. ALF is asking that the FCC consider the complaint when television stations owned by ABC *as well as all its affiliates* come up for license renewal. A spokesman for the conservative organization was optimistic about their complaint, saying, "We're not novices in this area."

Indeed. When ALF complained to the FCC about ABC's CIA newscasts, it already had on file two Fairness Doctrine complaints—one concerning the CBS documentary "The Uncounted Enemy: A Vietnam Deception," which was the subject of the Westmoreland libel case, and another which targets a segment of CBS's *Our Times With Bill Moyers* entitled "Pentagon Underground." The aggressiveness of such groups as ALF has earned them the label of "right-wing media bashers."

Ominous as these examples are, it is not the overt attempts at intimidation made possible by the Fairness Doctrine that represent its greatest threat to free speech. Most serious is the way the doctrine alters day-to-day news operations.

Station owners quickly learn that the easiest way to avoid complaints is to stay away from controversy. No one files Fairness Doctrine complaints for stories that were not produced—the complaints come only when broadcast news ruffles some feathers. As John Spain of the Radio and Television News Directors' Association testified at the hearings, "We all know the trigger words in this business: abortion, nuclear power, school integration, police brutality. Under the Fairness Doctrine the rule becomes, 'Deal with the issue rigorously and get burned; deal with it blandly and be safe.' "

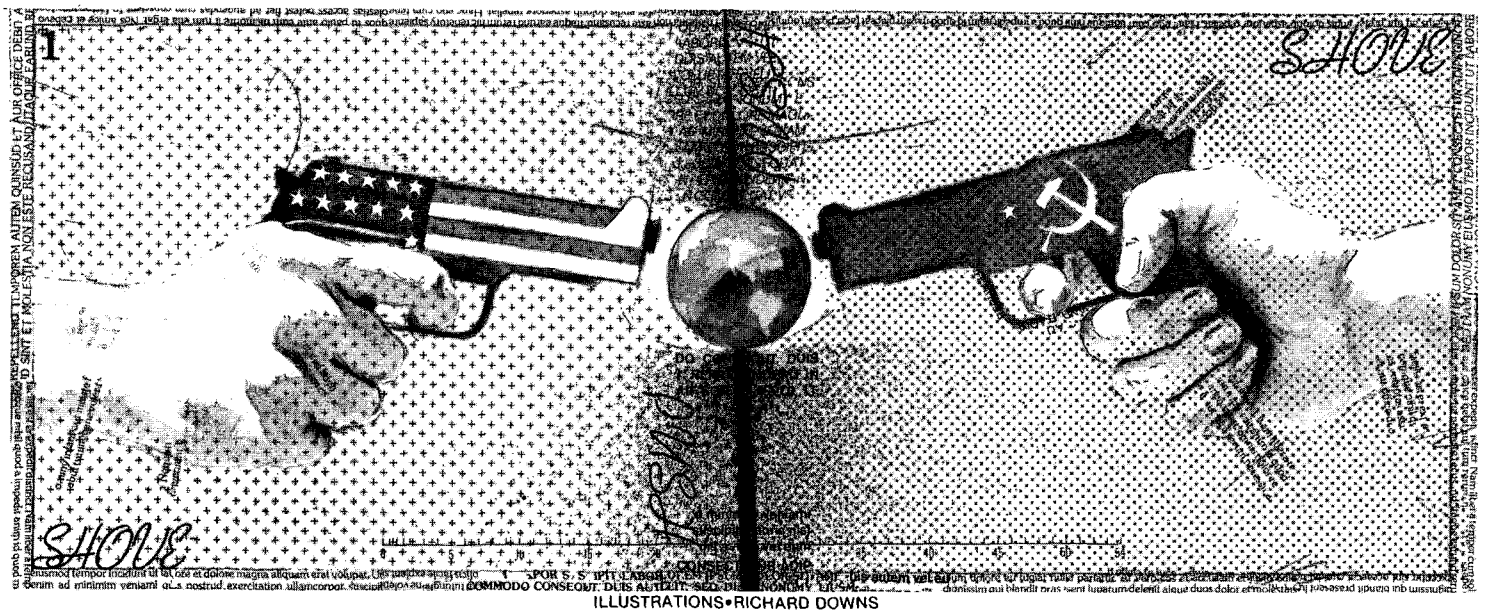
The Fairness Doctrine need not even be enforced in order to have this stifling effect. The very existence of the doctrine places a cloud over journalistic freedom. For example, the FCC dismissed ALF's complaint concerning the CBS Westmoreland documentary shortly after the general raised the white flag in his libel case. Within a week, however, Commissioner Quello castigated the broadcast media in a speech before a gathering of news executives, stating that more programming like CBS's "Vietnam Deception" and the ABC allegations about the CIA "could have serious adverse consequences for the press—particularly the broadcast press."

Quello described the Westmoreland broadcast as "shoddy journalism," which "unjustly maligned ... an honorable field general," and characterized the ABC news story as an "unbelievable accusation." He criticized television news in general for its adversary attitude toward government and its "insolent approach to the President." Although noting that "the present FCC doesn't believe in substituting its editorial judgment for that of a broadcaster," Quello added that the press should re-examine its role in order to placate "those who would ... tighten the straightjacket on electronic journalism."

The commissioner was engaging in a little regulation by raised eyebrow—a time-tested technique for bringing the press to heel. In this case, his message was clear: if television news doesn't "clean up its act," these Fairness Doctrine complaints may be looked at more carefully. The FCC's life-and-death power over broadcast licenses makes this tactic particularly persuasive. It has been said that station owners are so sensitive to the commission's moods that when the FCC sniffles, the television industry sneezes.

Thus, in the end, it is the viewing public that suffers because of the Fairness Doctrine. The efforts by both liberal and conservative groups to use the regulation do not lead to increased presentation of controversial information, but less. They help to ensure that television will be little more than the "vast wasteland" described by former FCC chairman Newton Minow. The real tragedy of the Fairness Doctrine is that it tends to make the most powerful communications medium in the world's history safe only for the likes of *Three's Company*, *Dynasty*, and happy-talk news. ◻

Robert Corn is a communications lawyer with the Washington, D.C., firm Steptoe & Johnson.



ILLUSTRATIONS•RICHARD DOWNS

A Down-to-Earth Guide to STAR WARS

An awful lot has been written by now about the Strategic Defense Initiative (SDI), better known as Star Wars. Most of it's been written by humble lay journalists like myself, and most of them prepared themselves for battle by poring over reams of highly technical reports and journal articles purporting to absolutely, positively prove that SDI can work . . . or can't work.

I know those reports and articles. I've read them. They're full of numbers. And tables. And graphs. And I know my colleagues, and I know they can't understand the important parts of such articles any better than I can. What they can understand are the conclusions, or the executive summaries, where the scientists skip all those equations and give it to you straight.

And what do the executive summaries say? They say that a successful strategic defense against nuclear attack would require 2,400 orbiting defense satellites costing maybe a billion dollars each. Or they say it would require only 90. They say that the satellites would weigh 40,000 tons and could never get up into space. Or they say that the satellites would weigh 25 tons and could be launched by the space shuttle. They also show beyond a doubt that the Soviets could make the object of all this—their intercontinental ballistic missiles (ICBMs)—immune to attack. Except, of course, everyone who knows anything about ICBMs knows that all the suggested countermeasures to strategic defense are absurdly impractical.

But in truth, the key to the debate over

You don't have to be a scientist to understand the real issue in the debate over a space-based defense.

By Richard Vigilante

Star Wars is not to be found in technical journals or scientific reports. The key is to understand the difference between "the old days" in this nuclear age, and today's realities.

Of First Importance

The only circumstance under which a deliberate nuclear attack by one superpower against another is conceivable is if the attacker has a "first-strike capability"—the ability to destroy the enemy's nuclear arsenal before the enemy has a chance to fire back. Nothing short of complete success is acceptable in a first strike, because partial failure would bring horrible retribution.

Only accurate, high-payload ICBMs, a recent development, hold out even a chance of making a perfect first strike. All other delivery systems, old-fashioned bombers and new-fashioned cruise missiles alike, are meant for nuclear counterpunching.

In the good old days, only counterpunching weapons—mainly bombers—were available. And in a world restricted to second-strike weapons, nobody could ever afford to throw the first punch. So nuclear terror was a different thing in those days. The dominant nuclear fear in the '50s and '60s was, "What if a madman got his finger on the button?"

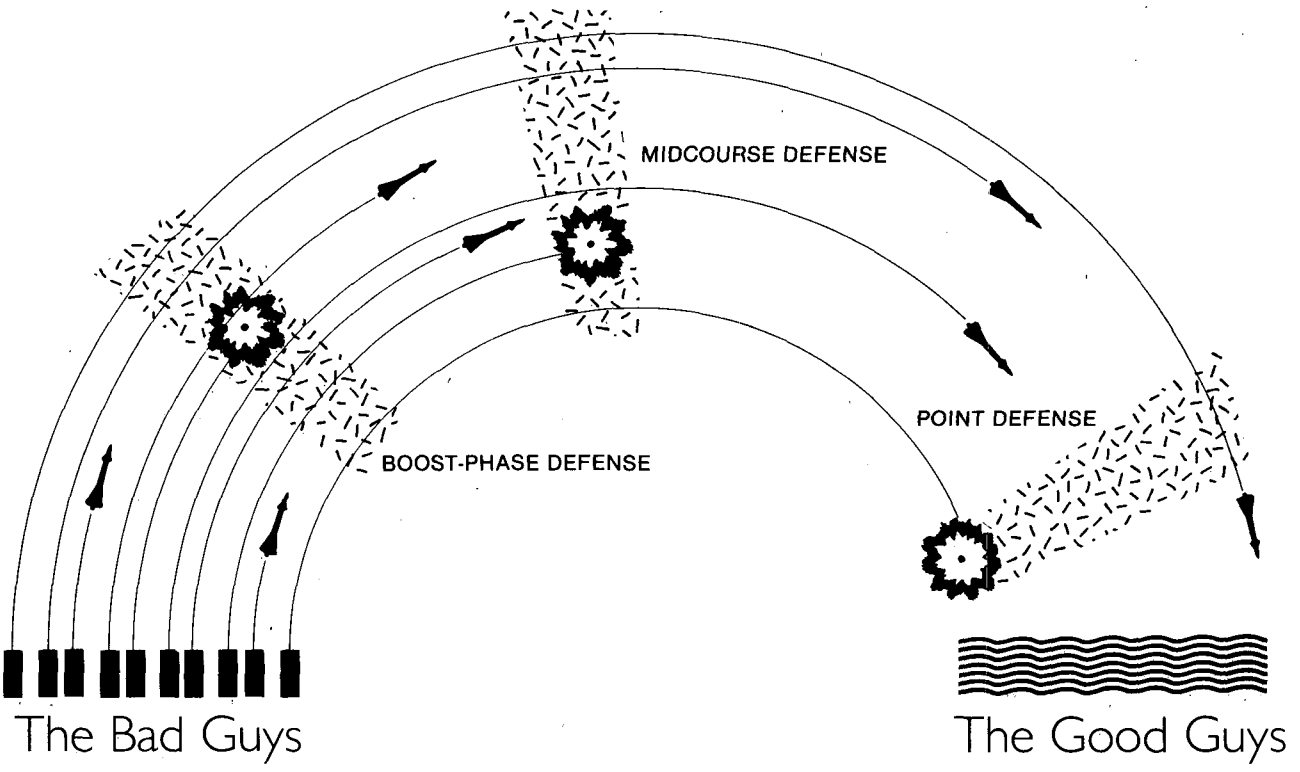
Today, people fear not insanity but the possibility that rational calculation might convince one side that shooting first would pay off. There is a point to the complaint that "if we just keep piling up missiles, eventually they are going to be used": a truly massive missile attack might bring instant victory. That makes huge missile stockpiles at least faintly destabilizing. Nuclear war is more likely today than it was 20 years ago.

This much seems obvious. Yet the debate over Star Wars is carried on as if no one could remember a time when deterrence was much more of a sure thing.

The essential error in discussions of strategic defense is assuming that the defense would be worthless unless it were impenetrable, with not a single Soviet bomb getting through. Star Wars critics who ridicule the possibility of a perfect defense shield make the same mistake as Star Wars proponents who claim a near-perfect defense is inevitable. And, arguing ultimately over tiny fractions of perfection, they ensure that the debate will become the exclusive property of technically proficient partisan scientists.

The truth is that strategic defense would be a complete success if it accomplished only one goal: pulling us back 20 years in time and eliminating the possibility of a successful first strike. Do that, and we are back to the days when the only punch was a counterpunch. As Bruce Springsteen says, you can't start a fire without a spark. Then we could go

The Star Wars Script



What the Hell Is an ICBM?

ICBMs—Inter-Continental Ballistic Missiles. These are land-based, nuclear-armed missiles that typically have three or four "stages" (separate rocket boosters that fire, in sequence, then drop away). The principal US ICBMs are the Minuteman and the MX. The Soviets have 70 percent of all their nuclear warheads on ICBMs, compared with 25 percent for the United States.

Other nuclear weapons are submarine-launched ballistic missiles (SLBMs); manned bombers carrying nuclear bombs; and cruise missiles (small missiles powered by jet engines), which can be launched from aircraft, ships, submarines, or trucks.

Silos—Both US and Soviet ICBMs are housed in these underground concrete structures. Today's silos are generally "hardened" by adding massive concrete and steel reinforcing to protect the silo from being destroyed by a nearby (off-target) nuclear blast.

MIRVs—Multiple Independently targetable Reentry Vehicles. These are the warheads carried by a ballistic missile's top, or last, stage (which is called the MIRV bus). Each reentry vehicle can be aimed at a separate target. Compared to a single-warhead missile, a MIRVed ICBM is an attractive target, because destroying one missile eliminates as many as 10 to 12 nuclear warheads.

ABM—Anti Ballistic Missiles. These are ground-based missiles designed to intercept ICBMs or SLBMs in their mid-course, or reentry, phases of flight. The 1972 ABM Treaty (part of SALT I) prohibits all but a handful of ABMs from being deployed by either the United States or the Soviet Union. Most proposed "Star Wars" capabilities are not permitted by the ABM Treaty, as written.

Directed-energy weapons—In contrast to weapons that operate via explosives (either nuclear or nonnuclear) or by sheer impact, a new type of weapon would be based on energy beams. One variety would use a very high energy laser; the other, a beam of elementary particles (protons, electrons, or neutrons). Either type of beam achieves its destructive result by focusing a tremendous amount of energy on the relatively fragile missile at which it is aimed.

Boost phase—the first phase of an ICBM's flight, during which all the booster stages except the MIRV bus (or single warhead) fire, propelling the bus into space on its ballistic trajectory, and then fall away.

Midcourse phase—the portion of an ICBM's flight during which the bus (or single warhead) coasts through space. If the missile is MIRVed, the independent reentry vehicles are released from the bus during this phase, to begin following separate paths to their targets.

Reentry phase—the final stage of ICBM flight, during which the warhead or MIRVs reenter the atmosphere and proceed to their targets.

—**B. K.**

back to worrying about a madman getting his finger on the trigger, which, compared to today's worries, would be an amusing pastime.

Whether we can build a defense good enough to make a first strike *unacceptably risky* is a much simpler question than whether we can build one that is *impenetrable*. We laymen can address it without having to make a leap of faith in someone else's equations.

How Much Is Enough?

The foremost strategic argument against Star Wars is that the only good defense is a perfect defense. *The New Republic*'s Charles Krauthammer, one of the most responsible and intelligent critics of Star Wars, makes this argument as well as anyone else: "An American defense that is 99 percent effective would still allow a hundred nuclear weapons to land on American soil. That is failure. A Soviet offense that is five percent successful could, if targeted at cities, kill half the U.S. population instantly. That is success."

Krauthammer misses the point of strategic defense, because he misses the point of a first strike. The purpose of a first strike is not to cause misery (hitting cities) but to destroy the enemy's ability to retaliate (hitting nuclear weapons bases). And a first strike that is not perfect is by definition a failure.

What is enough defense to discourage a first strike? Most suggested defense plans come in three stages: (1) Boost-phase defense—an attempt to shoot down enemy ICBMs "on the rise," before they have released their MIRVs, or multiple warheads. This must be done from space. (2) Midcourse defense—an attempt to shoot down either the ICBM "buses" that carry the MIRVs or the MIRVs themselves while still in space but after the booster has burned away. This might be done from space, by antiballistic missiles (ABMs) launched from the ground, or from atmospheric aircraft. (3) Point defense—an attempt to destroy individual warheads within a few miles of their targets. This is done from the ground.

Some Star Wars proponents envision 80 percent effectiveness at each stage. Altogether, this would take out 99.2 percent of incoming warheads. This is a tall order, however, and is unlikely to be filled within this century.

Fortunately, a first strike can be deterred with a much less effective shield. A first-strike force must deliver at least two warheads against every enemy nuclear weapons installation—two, because some missiles will fail, some reentry vehicles will go awry, and some warheads will fail to destroy their "hardened" targets (ones that are specially

strengthened and reinforced against nearby nuclear blasts).

The consequences of missing any enemy target are huge: a counterattack of a few MX missiles, with their 10 warheads each, could destroy most Russian cities, cities being more likely targets on a second than on a first strike. So a defense that promised any substantial diminution of the attacking force would deter the first-strike attacker.

Gen. Daniel O. Graham, a major figure in the Star Wars debate, argues that even a reduction of 30 percent in the boost phase (before the ICBMs had released their MIRVs) would confront the Russian strategic planner with "a problem full of uncertainties." The planner would "not know how many warheads will arrive over the target area and—even more crucial—which ones will arrive over which targets. This changes the simple arithmetic problem into a calculus full of uncertainties." And the clincher: "Such uncertainties are the essence of deterrence."

A strategic defense that was only 30 percent effective in each of the first two stages and 50 percent effective at the point defense stage (the easiest stage at which to mount a defense) would screen out all but 25 percent of incoming warheads. Moreover, some of those warheads would be doubled up—aimed at the same target—so much of the US nuclear force would be sure to survive. The destruction resulting from such a hypothetical attack would be unspeakable. But it would remain hypothetical, because a 75 percent reduction in the attacking force would make a first-strike attempt unthinkable.

If strategic goals are thus realistically assessed, the technological goals become fairly modest. The boost-phase defense, the only stage that *must* be placed in space, is the only stage to which fundamental technological objections have been raised (point and midcourse defenses are already known to be possible). But a boost-phase defense that is 30 percent effective doesn't seem so challenging.

What Would They Do Then?

Another criticism leveled by Krauthammer, as well as by such SDI advocates as Dr. Edward Teller, is that any system permanently deployed in space cannot work. They fear that defense satellites in permanent, predictable orbits would be too vulnerable to handle the vital mission of nuclear deterrence. Shooting down permanently orbiting satellites is well within the capabilities of both superpowers, which is enough to make Krauthammer despair and Dr. Teller propose far-fetched "pop-up" satellites to be launched only after the Soviets launch their ICBMs. But these critics forget our first rule: the purpose of defense is not to make attack impossible but to make it impossibly costly.

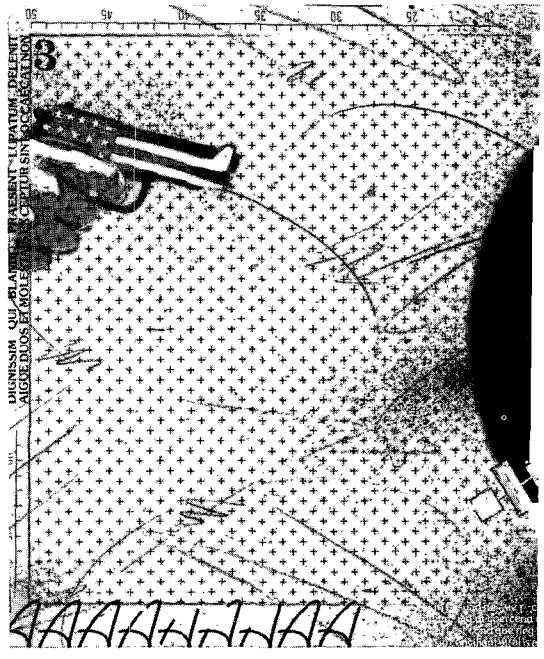
As General Graham pointed out in some of his early writings about strategic defense, the reason that wise 19th-century generals screened their infantry columns with advance cavalry units was not that they believed lightly armed cavalry could long defend the infantry from an enemy onslaught. Rather, the cavalry screen was intended to force the enemy to reveal his strength and position before the main battle was joined and to protect the infantry from being attacked by surprise.

Should an enemy, preparing to launch a first strike, first move to wipe out the space-borne stage of our strategic defense, he would run into a cavalry screen that would make a successful first strike impossible. The United States, anticipating an immediate attack, might launch its own ICBMs immediately. More likely, US planners would go into a "launch under attack" or "launch on warning" mode under which the first sighting of a Russian ICBM would provoke US retaliation.

Again, a horrible scenario. But the important point is that it would never happen—Russian generals know all about cavalry screens.

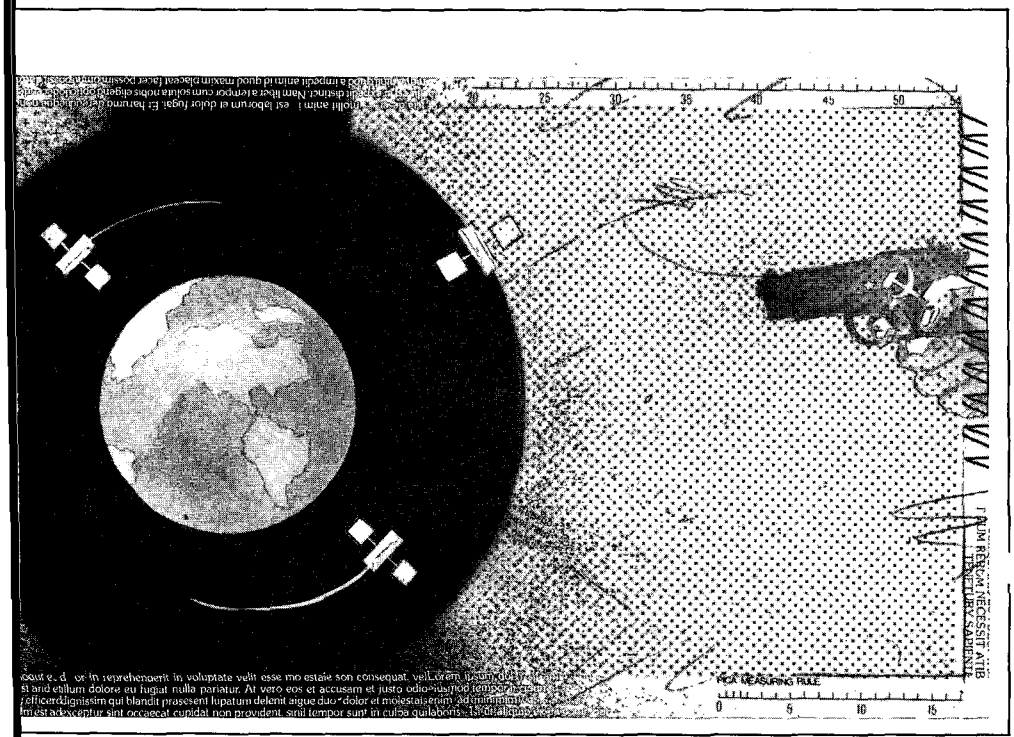
Another common strategic objection is that a realistic—that is, "leaky"—US defense would be destabilizing, because it could put the Russians into a "use it or lose it" situation. Suppose the United States builds a leaky defense, goes this objection. Although an all-out Soviet first strike couldn't completely destroy the US arsenal, they might figure that it could destroy the United States as a functioning society and thus produce surrender. On the other hand, the United States, having put up a defense shield, could launch a first strike against the Soviets, very likely destroying enough of the Soviet arsenal that the Soviets would not be able to penetrate even a leaky defense. They would be left no option but surrender. Surveying these possibilities, the Russians might be driven to a preemptive attack.

The key
to the debate over Star Wars is not to be found in technical journals or scientific reports.



This scenario is not compelling, however. The Russians have some small chance of launching a successful first strike today. A realistic US defense can only reduce that chance. Though a US defense might make it slightly more risky for the Russians *not to* shoot first, it would, on the other hand, make it suicidal for them *to* shoot first.

Neither is the scenario realistic. Despite our technological edge, the Russians may well be ahead in the practical pursuit of strategic defense. By the time we have a reasonably effective defense, we can be pretty certain that they will have a reasonably effective defense, too. Neither side will be able to launch an effective first strike. Back to counterpunching.



The final common strategic objection is that even if we could put up a perfect defense, we couldn't put it up all at once. Seeing us begin the work, the Russians might attack immediately rather than face "nuclear blackmail" once our defense was completed.

This scenario is unrealistic for the same reason: the Russians are heading for strategic defense full throttle. There is never going to come a time when we have a solid defense and they have none. Should we begin to outpace them, it will be much easier to produce a verifiable agreement to phase in SDI gradually than it is to agree on unverifiable arms-limitation treaties. Moreover, since any such agreement would be concluded while we were in the lead, we would have little to fear from Russian treachery.

Strategic Bomb Banning

Understanding the strategic purpose of missile defense helps in sorting out the technological disputes.

The Holy Grail of the most enthusiastic Star Wars advocates is a space-based defense so impregnable to ballistic missiles as to consign them to the junkpile of history. Space-borne battle stations armed with directed-energy weapons (lasers or particle beams) are the weapons of choice for this mission, because such beams travel at or near the speed of light and, in the vacuum of space, with undeviating precision. The beams would reach their targets almost instantaneously. A battle station could fire on the target, learn the results, and fire again at a new target within a few seconds.

In theory, the several-thousand-fold disparity between the speeds of the energy weapons and the speed of a ballistic missile would make the missile obsolete. Sophisticated energy weapons would do to the ballistic missile what the machine gun did to the cavalry charge. Maintaining a missile force would be as pointless as retaining regiments of horse soldiers.

Moreover, a thoroughly reliable space-based defense would make space, not the land on which people live and work, the decisive battlefield. As long as both antagonists had strong space-based defenses, there would be no point in either side attempting a nuclear attack. A thorough space defense consisting of hundreds of space installations would provide virtually perfect reconnaissance of enemy movements on earth. Sophisticated energy weapons might even be able to destroy earth-based targets.

Control of space—that is, defending one's own space installations and destroying the enemy's—would virtually assure victory on earth. Warfare might be confined to a battle for the control of space, which, once won, would produce quick surrender and few civilian casualties. Most important, war would be relegated to space not by treaty or wishful banning of the bomb but by strategic necessity.

The vision is certainly glorious enough to justify the enthusiasm of Star Wars advocates. Unfortunately, its realization requires a leak-proof defense. That, in turn, requires fully mature energy weapons—powerful, cheap, and efficient enough to make ICBMs into antiques.

The potential of energy weapons is so great that it seems inevitable that they will one day dominate strategy. But whether and when these weapons will arrive are questions at which scientists can make only informed guesses. Few laymen have the skill to evaluate such speculations. A more fruitful question for lay inquiry is whether such weapons are a realistic possibility, or are there objections so insuperable that the attempt should be abandoned?

But Could It Work?

In the first phase of the "war against Star Wars," to use Robert Jastrow's phrase, opponents concentrated on (*a*) suggesting that SDI absolutely requires energy weapons and (*b*) demonstrating

that the problems with such weapons are too overwhelming to make their pursuit realistic. It was in this vein that the Union of Concerned Scientists put out a widely quoted report claiming that 2,400 laser battle stations would be needed, and each would weigh 40,000 tons. The UCS, however, has since quietly retracted its claims. The scientific consensus is that only about 100 satellites would be needed and that they would weigh in the tens of tons, not thousands of tons.

Reviews of other widely circulated charges—such as that adequate laser weaponry might consume 60 percent of US electrical power capacity—have made it clear that these charges were politicized exaggerations. The attempt to characterize energy weapons as impossible fantasies has failed.

Nevertheless, directed-energy weapons do entail enormous technological complications. For laser weapons, three criteria must be satisfied.

The laser must be of sufficient power to destroy a laser-protected ICBM within a fraction of a second. For the sort of lasers most commonly suggested as weapons, that means developing 15 or more megawatts of power. We are progressing very rapidly but are still in the 5+ megawatt range. Higher-efficiency lasers would need less power but are a newer phenomenon.

The laser must be aimed with a pointing and tracking system capable of locking onto a target moving at thousands of miles an hour as much as a thousand miles away. It must be able to hold the beam on track for a few moments despite the tremendous vibrations created by a high-energy laser. The Air Force Talon Gold project had as its goal the construction of a system accurate within two-tenths of a millionth of a degree, but the project was recently abandoned.

Finally, conventional lasers must be focused by sets of mirrors, which must be optically perfect to keep the beam on course and must be perfect reflectors to keep the mirrors from being burned up by the lasers. The more powerful the beam, the larger the mirror. Conventional lasers would probably need 15-meter mirrors, but we have not yet built one half that size. More experimental lasers might use smaller mirrors or even no mirrors at all but are still unproved.

Beam weapons are even less far along than lasers. We do not have near at hand an adequate weapon for a leakproof defense. And even were the weapon at hand, there would be numerous other difficulties with getting 100 or so of them up into space, fueling them, supplying them, controlling and coordinating their actions, and protecting them from attack.

This does not mean that laser or beam technologies should be abandoned. They are far too promising for that. But concentration on advanced technologies is aggravating the worst tendency of US military R&D: the determination to pursue ever-better technology on the drawing board while postponing the construction of the best weapon available today. Indeed, congressional opponents of strategic defense have made it clear that they are willing to give the president some Star Wars funding, but only for the most speculative research projects. They oppose any program that has a chance of being useful within this century.

Whether undertaken in good faith or not, as far as space weapons are concerned this approach amounts to an attempt to skip first-generation, pre-laser weapons. And yet it is far more certain that we can build a pre-laser system today than that we will be able to build a laser or beam system 20 years from now.

What Is Possible Today

The "High Frontier" project, directed by General Graham, kicked off the Star Wars debate almost four years ago with its own suggested first-generation defense system, one to put up while more sophisticated approaches are developed. That system has been placed on the back burner by both Star Wars advocates and opponents, partly because Graham was so forthright in admitting that it was an imperfect, "quick and dirty" suggestion put forth more as an illustration of strategy than as an engineering blueprint.

Yet the High Frontier system is fundamentally sound. Precisely because Graham paid more attention to strategic problems than technological ones, the technology he chose turns out to be very promising for first-generation defense. The High Frontier project never lost sight of the primary goal: not to make attack impossible but to make it impossibly costly.

The High Frontier system is a first-phase, or boost-phase, defense system, meant to be combined with whatever midcourse and terminal defenses seem appropriate. It consists of several hun-

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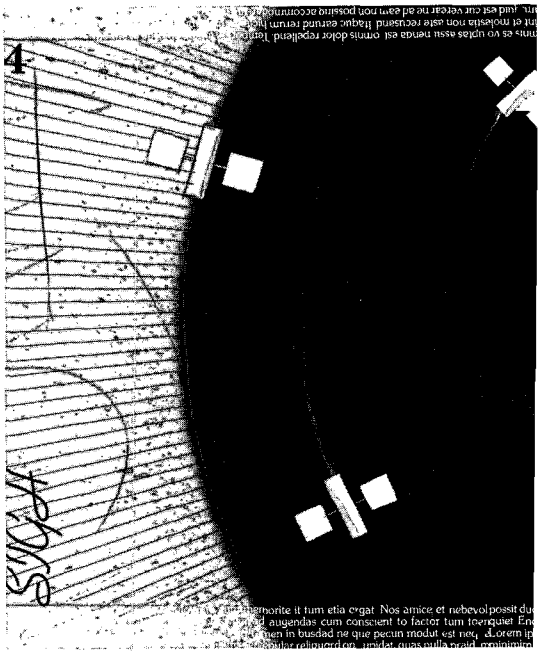
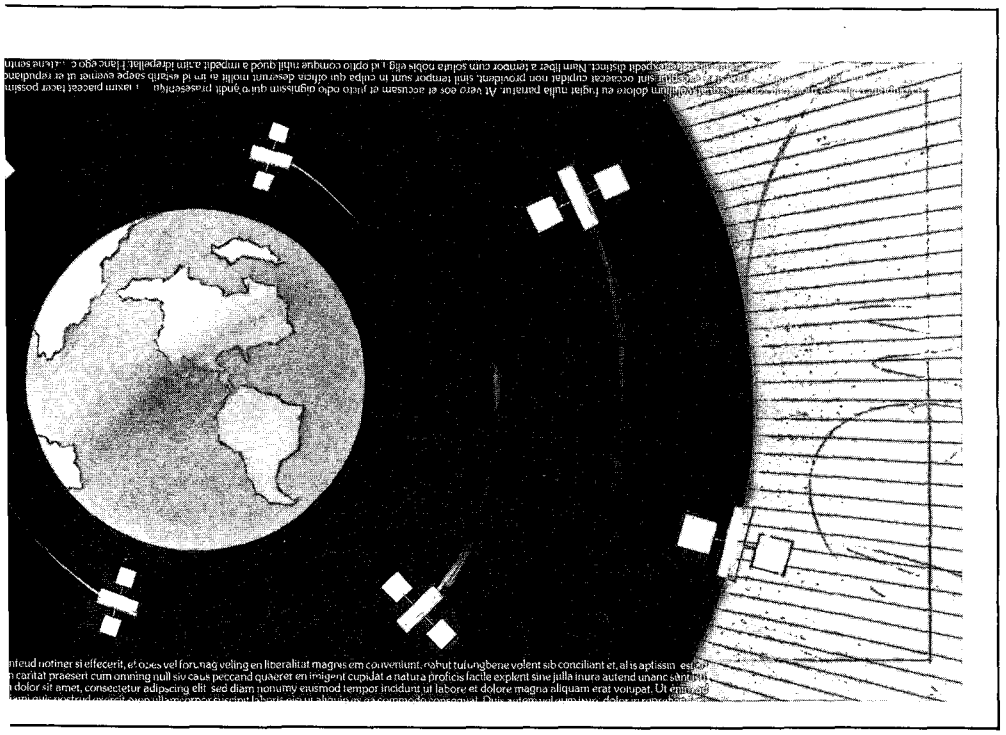


dred orbiting satellites linked to a central control system, each individually capable of detecting enemy missiles in the boost phase. Each satellite carries several dozen simple, self-propelling, rocket-powered projectiles capable of homing in on and colliding with the enemy boosters after being launched in their direction by the satellites. Every task involved is a familiar one: detecting enemy rocket launches, firing an "air-to-air" missile at a high-speed target, making target adjustments from a distance, and building a missile smart enough to handle the terminal approach on its own.



The speeds and distances are greater than those with which the Air Force customarily deals within the atmosphere. But several recent experiences show that the difference is only one of degree. We now know it is possible to shoot down a satellite—the Russians have done it many times, and we are close to having an operational antisatellite weapon ourselves.

Satellites travel at speeds comparable to those of an ICBM, the only difference being that an ICBM is an accelerating target and therefore somewhat more challenging than constant-velocity satellites. In addition, the Soviets have orbited an antisatellite weapon very similar to the antimissile weapon proposed by High Frontier: Cosmos 1267, a 30,000-pound pod-shaped battle station carrying a large number of small, self-guiding projectiles. The Russian weapon is not meant for missile defense. Still, it shows that our adversaries consider a design similar to High Frontier's usable for space missions analagous to knocking out missiles.

Finally, and most important of all, the US military has already successfully tested a weapon that does, under more difficult conditions, what the High Frontier system would have to do. On June 10, 1984, the US Army "hit a bullet with a bullet," intercepting and destroying a reentry vehicle above the atmosphere. The interceptor was a nonexplosive projectile (actually a metal umbrella 15 feet in diameter) launched by the first two stages of an ICBM. The interceptor was deliberately launched 20 miles off-course to test its ability to make in-flight corrections. It put itself back on course, closed on the target at 20,000 miles per hour, and scored a direct hit, completely destroying the target vehicle by impact.

This test proved that reasonably effective midcourse defense against reentry vehicles is possible. Boost-phase defense should be even easier in several respects.

In this experiment, the interceptor was launched from the ground and had to climb into space to find its prey. In boost-phase defense, the satellite would already command the "high ground" of space and be positioned to watch the target climb into its path. And boost-phase satellites would be shooting at boosters, somewhat slower-moving targets than reentry vehicles.

Since we know that terminal defense is easier than either midcourse or boost-phase defense, the chances are good that we could, today, start a practical first-generation SDI program that would yield a defense in the 75 percent effectiveness range. And if we can do it, the Russians, who have a history of pursuing low-tech solutions, can probably do it too.

Nevertheless, current indications are that even Star Wars advocates in the Reagan administration and the military have decided to skip all first-generation, pre-directed-energy weapons. This is the wrong approach. Weapons evolve. They do not emerge in all their fully developed technological glory after spending a few extra formative years on the drawing board. If we allow ourselves to imagine that we can envision the history of space warfare in advance and can know ahead of time which will be the optimal weapons and technologies and when and for which missions they will be used, we may find ourselves in total control of the blackboard but without a position on the battlefield.

We know that a High Frontier system would work as much as we can know that of any untested system. There is no more theorizing to do. The only tasks left are final design, building, and testing—not to determine whether it will work but to determine how it can be made to work.

Someday we *will* send the ICBM the way of the cavalry charge, but only after long, hard, practical experience with the simpler goal of developing first-generation defensive weapons, bringing back the impossible costs of a first strike. Space warfare, with all its technological challenge, should be the deliverance of the technologically superior West. But if we refuse to put strategy before technology, or if we worship our technology rather than using it, it could be our destruction. r

Richard Vigilante recently joined National Review *as articles editor. This article is a project of the Fund for Objective News Reporting in Washington, D.C.*

The King of America

By Richard Mitchell

The Associated Press
SHAMOKIN, PA.—A plaque etched with a lesser-known Benjamin Franklin quotation was removed from a wall at a vocational school here at the order of the state civil rights coordinator, who said the slogan's use of "he" was sexist. The official, Glenn Dean Davis, was inspecting the Northumberland County Vocational-Technical School during the summer when he noticed the plaque, which reads, "He who hath a trade, hath an estate," said school director James Buggy.

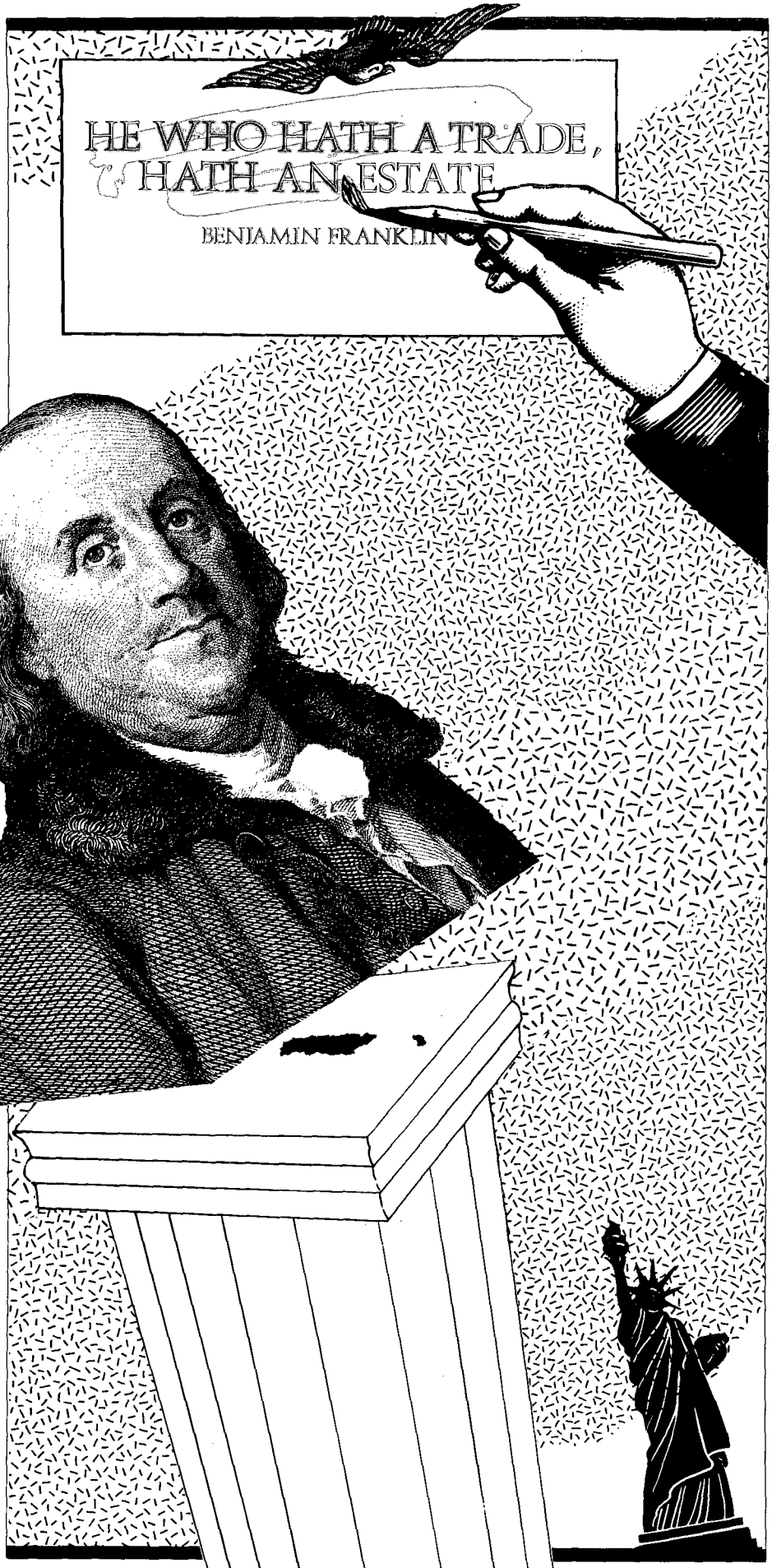
Davis contended the use of "he" discriminated against women and the school removed it, Buggy said.

If concepts are not clear, words do not fit. If words do not fit, the day's work cannot be accomplished, morals and art do not flourish. If morals and art do not flourish, punishments are not just. If punishments are not just, the people do not know where to put hand or foot.

CONFUCIUS, *Analects,* XIII, *3*

When Ben Franklin came forth from Independence Hall, an old tale tells, he was met on the steps by an old woman who asked, "What are we to have, Mr. Franklin, a republic or a king?" "A republic," he replied, "if you can keep it." It was an answer perfectly typical of his most characteristic frame of mind, good cheer salted with skepticism.

He would not be astonished, therefore, to learn that the Americans had not, after all, been able to keep their republic and had chosen instead to put their lives, liberties, and even their pursuits into the keeping of a very nice king. Nevertheless, we would not like to have to explain to Mr. Franklin



how that came to happen. He might ask embarrassing questions. But, armed as we now are with exemplary tidings from Shamokin, we would be happy indeed to elucidate for the elderly gent his doubtless unwitting, and surely *ex post facto*, but nevertheless egregious transgression, in the use of "he," against the wise and kindly laws of our sovereign.

No man at any time hath seen the King of America, which is to say, of course, lest compassion cease among us, that no man or woman or child of either sex, born or unborn, hath at any time seen the King of America, or the Queen of America, as we would surely call him if he *were* the Queen of America, lest some little girl chance upon these words and suppose herself debarred, or even *deemed* debarred, from high and comfortable office in the land of opportunity and suffer thus the admittedly unknowable but surely dreadful consequences of not feeling about herself exactly as she ought to feel if we are to remain a great nation with liberty and justice for all and even, someday, be just like the Japanese, only more so.

You see, Ben, it *can* be done. It's partly a matter of prose style. With a little more thought and diligence—informed, to be sure, by an enhanced social awareness—you too could have written well, rather than just blurting out, in such childish little words, what is, after all, nothing more significant than one man's personal opinion, and a man, furthermore, who is known actually to have called fools "fools" and knaves "knaves." That's discrimination. The trick is in the language, Ben, which is why it doesn't matter at all that no one has ever seen him. He is the King of our language, and thus the King of our minds. We know him as well as we need to, and entirely by hearsay. Whatever he may say, we will hear.

He says, for instance, that one of his officers, a certain Glenn Dean Davis, is a civil rights coordinator. We hear. And we obey, but not, as you might imagine, out of servility, oh no, but out of our enhanced perceptions of social responsibility. We are not a people who would leave our civil rights to languish uncoordinated.

Nor would we ask, as you seem about to ask, "What *trade* hath he, who is a 'civil rights coordinator'? What is *done* when his 'work' is done, what made or mended, what worth increased or usefulness enlarged? Could he set up shop for himself, making prudent provision for all of his progeny not only of substance but

of its means, the life of decent industry and seemly self-reliance that any free man would prefer to bounden service and that any good father would want to bequeath to his sons? Should he hang out his shingle above his own door, would his custom be great, clients aplenty in pressing need of civil rights coordination? Or can he do his 'work' only at the bidding and pleasure of your King, whose pleasure, in another season, may change, leaving his faithful servant to live by a 'trade' that is of no use at all to anyone but the King?"

No more do we wonder, "What *are* these 'civil' rights? How are they to be distinguished from other kinds of rights? Can there be *kinds* of rights at all? Whose right to what is this man coordinating, whatever that might mean, when he removes some words from public view? Are there some words that your King would not have his subjects read, that he sends his servants far and wide to sniff them out? If there were other servants of your King, all tradeless men who could not live except the King employ them, and set to seek out witches, would witches not multiply marvelously among you?"

What trade hath he, who is a "civil rights coordinator"?

Such questions, Ben, we know better than to ask. They have nothing to do with the real necessities of real life in a real democracy. They are nothing but language questions. Just talk. And what would come of weighing them? More talk. That's all. We are a nation of doers, Ben. We are not going to sit around and leave undone the vital work of the coordination of our civil rights just because we don't happen to know what that means. We do have to be practical, you know. It is far better to set people free than to ponder, in unproductive idleness, the meaning of freedom, which can end in nothing more profitable than a collection of words.

Besides, you can be very sure that insofar as we need to know them, the meanings of such technical terms as *civil rights coordination* and *freedom* have already been dealt with in countless official documents prepared by official servants of our King, and in the official language of our King, which, you might take note, scrupulously avoids the error of any form of discrimination. Would you not, to know the work of the mason, have gone to the mason? Who better, then, to tell us the work of civil rights coordination than those who do it? Who better to tell us about freedom than those who are paid to provide it?

Reflect for a moment, Ben, on Confucius, who was, as you must by now understand, an unmitigated discriminator. And a sexist. A disciple once put to him this question: What would be the first thing you would do if you were suddenly handed the reins of government? To that, the wily heathen replied that he would first settle down to a good long bout of the "clarification of concepts." The disciple, expecting something practical, was astonished, but we are not. We know all too well the ways of these elitists.

Consider, now, the inevitable consequences of that seemingly innocent proposal, and consider, too, how readily we would all be taken in by that cunning absolutist if we fell into the habit of considering seriously questions like those you are eager to ask. If we did that, our concepts might become clear. If our concepts were clear, our words would fit, and we would give a civil rights coordinator quite another name. His function, too, and the "civil rights" themselves, we would come to designate in terms other than official. Such looseness of speech must inevitably make thousands of the servants of the King, and their incessant labors in our behalf, seem little short of ludicrous, thus undermining our faith in Democracy.

And there's even worse. If our words were to fit, the day's work would get done. When the carpenter has built the house, the house is built; when Civil Rights Coordinator Glenn Dean Davis has prudently hidden from the eyes of the exquisitely sensitive your unfeeling slur, no house is built. All of the work is still to be done. Making the world a better place for the greater good of the greater number may not be what you so quaintly call "a trade," but if you can get paid for doing it, it makes one hell of a good job.

And if such jobs were not done for us by servants of our King, Ben, we would be left to *ourselves* to consider what is right and just; and should we want to live according to our considerations, we would actually have to *choose* to do so. And should we form the habit of such choosing, of distinguishing the better from the worse, following the better, fleeing the worse, which is just another way of discrimination, there would soon break forth among us a calamitous plague of morals and art. Morals and art are just what we can expect from people who imagine that they *can* choose between the better and the worse, bestowing esteem only on the estimable and denying tolerance to the intolerable.

If such people abounded among us, could we remain the land of opportunity? How could the sellers sell, the convincers convince, the promoters promote? Are they not sellers, convincers, promoters, all of those tradeless detectors of better and worse in *other* people? Why should they suffer the cruel and unusual punishment of justice, ridicule, disregard, and unmitigated joblessness? Such would surely be their lot in a land where it is supposed that people can read your words for themselves and where it is also supposed that whosoever *is* offended can find remedy both sufficient and salutary in saying, and thus in *learning*: Keep your advice, Mr. Franklin. I will figure out for myself, thank you, how best to live in this world, to what work I will put my hand and on what path to put my foot. I will even decide for myself, Sir, where to put my thumb, which is, just now, as I wish you could see, firmly pressed to the tip of my nose.

And that, Ben, is exactly the sort of antisocial behavior that would afflict us as the result of the clarification of our concepts and the consequent loss of *all* of our coordinators. Long live the King, Ben, long live the King! ◻

Richard Mitchell's most recent book is Tower of Babble. *This article is adapted from his publication* The Underground Grammarian.

By Scott C. Matthew

Three Cheers for Trade Deficits

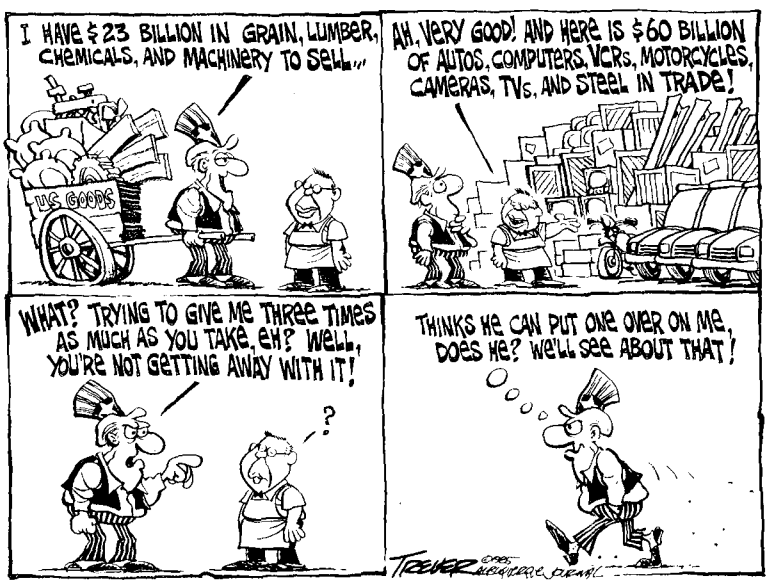
It's aggravating to watch government and private economic "experts" confusing and distorting the general perception of the US balance-of-trade deficit. Most of what we hear coming out of Washington on the subject is self-serving nonsense—doomful pronouncements to scare up support for policies protecting special-interest groups.

Simply put, in 1984 the rest of the world sent the people of the United States roughly $452 billion worth of goods and services. At the same time, the rest of the world accepted roughly $362 billion worth of goods and services from the United States. The $90-billion difference is the US trade deficit. (Those wishing to distort the picture will often quote a higher figure that ignores the US surplus in services exported.)

If we paid the world $90 billion more than it chose to spend on US goods and services, what did they do with the money? Nothing terribly dangerous or insidious. In fact, they made a net investment of about $60 billion in our economy and chose to hang onto about $30 billion worth of those little pieces of paper called dollars. What do the experts think the problem is? Good question!

First, let's consider the major portion of that deficit—the $60 billion that foreigners invested in the United States. Politicians and special-interest groups are screaming that we must force the rest of the world to spend that $60 billion on goods and services *today*, rather than allow them to spend it on stocks and bonds. They claim that we would be much better off if we could just get our trade partners to cart $60 billion worth of goods back home. The special interests warn that if the appropriate measures are not taken soon, economic hell will break loose. This view is nonsense.

Americans, of all people, should understand that well-conceived investments benefit *everyone* involved. The investor supplies capital to a given project because he believes it shows the best potential for return. The person accepting that investment does so because he believes that he can produce the proper return for the investor using that capital and still have wealth left over for himself.


I HAVE $23 BILLION IN GRAIN, LUMBER, CHEMICALS, AND MACHINERY TO SELL...
U.S. GOODS
AH, VERY GOOD! AND HERE IS $60 BILLION OF AUTOS, COMPUTERS, VCRs, MOTORCYCLES, CAMERAS, TVs, AND STEEL IN TRADE!
WHAT? TRYING TO GIVE ME THREE TIMES AS MUCH AS YOU TAKE, EH? WELL, YOU'RE NOT GETTING AWAY WITH IT!
?
THINKS HE CAN PUT ONE OVER ON ME, DOES HE? WE'LL SEE ABOUT THAT!
TREVOR

If the investor simply holds onto his wealth, he misses the opportunity to make more. And if America refuses that investment, it misses the opportunity to increase its wealth as a nation.

When foreign investors give us $60 billion to work with, they are giving us the chance to produce wealth for ourselves by using their wealth. They are building factories, doing research, creating jobs here in America. In an uncertain world, we all like to have a little something saved for a rainy day. The rest of the world understands that there is no safer place to set aside that emergency fund than in America. Rather than consume all their wealth today by buying goods from us, foreigners choose to invest some of that wealth in America. And investing in America is good for everyone—especially Americans.

What about that other $30 billion that foreigners simply hung on to in 1984? That was a gift presented by the world to the United States. Americans sent $30 billion worth of little pieces of paper out for goods. The rest of the world chose to hang on to the dollars themselves rather than cash those dollars in for real things. For much of the world, the US dollar has taken on the role traditionally played by gold—it is a store of value and medium of exchange in troubled times, a parallel currency that fuels what little life some economies have. That others in the world will give up real things just for a sense of sharing our security is a vivid testament to the relative strength and stability of the American economy.

So the situation is really quite simple. Having traded wealth for wealth with us, foreigners may either take all their wealth home with them to consume, or they may leave some of it here in America to produce more wealth—both for its foreign owners and for Americans. Now if Congress passes legislation forcing the people of other nations to take all their wealth home with them, a few special-interest groups stand to benefit. But if that wealth remains here in America, producing still more, then the nation as a whole will benefit. We couldn't even begin to force the world to spend the billions of our paper dollars it hoards, and we would be foolish to try to force foreigners to invest their wealth elsewhere.

To argue that foreign imports are hurting America is to miss this fundamental point: if both parties in trade didn't perceive benefits for themselves, there would be no trade. Those who still insist that it is in America's best interest to force other nations to drag their wealth home with them after the trade, rather than to let them leave some of it here to grow, are talking about *their* special interest, not America's interest.

Scott Matthew is senior vice-president of Realty Electronics, Inc., in Fond du Lac, Wisconsin.

By Timothy Condon

You Can Still Squeeze Through Loopholes

As I write this, the big news is "tax reform." As you read this, the big news will doubtless still be "tax reform."

Traditionally a polite way of referring to "tax increases," this time it may actually *mean* something. Even under the much-ballyhooed "Treasury II" plan that President Reagan has pushed—clearly the least attractive among the three main contenders, which include the Democrats' Bradley-Gephardt bill and the excellent Kemp-Kasten proposal—there will be some relief, for some people. The most attractive feature of all the bills is the simplification and "flattening" of tax rates, bringing the all-important marginal tax rate (the highest rate paid for the last dollar you earn during the year) down from an obscenely high 50 percent to 25 percent or 30 or 35 percent, depending on whose proposal you're looking at.

So relax, man, sit back and enjoy the new breaks, relax on the tax, you know? Well, no, not really. You see, in all the proposed tax plans there are "losers," foremost among them people like myself, who take advantage of every nook and cranny in the tax code. It's still a good idea for all Americans, as a patriotic duty, to try and minimize their taxes to the max.

So what to do? A good first step would be to buy a copy of the new tax act when it gets passed (as it almost assuredly will this year, despite all the professional naysayers hoping for the worst), or at least a popular explanation of the beast. Familiarize yourself with the *new* nooks and crannies, the *new* angles to play... because the new tax plan, no matter what you're hearing from the media, is going to be chockablock with ways to reduce your taxes.

Accordingly—and as I've always preached—the best way to make sure the government doesn't steal an unnecessarily large amount from you is to make sure you know enough about the new tax law to *take advantage of it.* Simple, hah? Here are some areas you should be forewarned to look at closely:

Brackets. First off, you've got to remember that everything you're hearing about "flat-tax proposals" is a lie. *No one* is proposing a flat tax. All the plans simply replace the present 14 or 15 tax brackets with 3 or 4. But the basic rule of so-called progressive taxation still holds: *if you can lower your taxable income, you may shift yourself into a lower bracket where the government won't steal as large a percentage from you.* Under the Treasury II plan, that means you might be able to shift yourself out of the top bracket of 35 percent down to the 25 percent or even (hurrah!) the 15 percent bracket. That's a 10-percentage-point hit prevented with each step. If you know how to exploit the new tax code, you too can pay less taxes by dropping your bracket.

The tax plan is going to be chockablock with ways to reduce your taxes.

Retirement planning. What are the new provisions—expanded IRAs, perhaps, so a nonworking spouse can put in the full amount? Keogh plans for the self-employed made more attractive? Take advantage of all of them: you're not going to be 35 forever, and you'll be making a *hell*uva lot less money—and therefore paying lower tax rates—in 20 or 30 years, when you have to pay the piper for those retirement funds.

Itemized deductions. What about the old Schedule A? It seems a pretty sure bet that the deduction of state and local taxes will be knocked out (a positive development, in my estimation, since big-taxing state officials will be held more accountable by their constituents).

What about medical deductions on Schedule A? Something will doubtless be left, although how much and how helpful is up for grabs. It seems sure that the deduction of home mortgage interest won't be touched, and probably $5,000 or so of other interest will be deductible. Maybe now you should invest in the largest house you can afford. And maybe you should watch your other indebtedness so as to have the maximum interest deduction allowable, but not one cent more. Work expenses of various kinds will probably still be in the picture. You should know what they are. And keep your eye out for casualty and theft loss deductions, which may be retained in a minor way.

Real estate. Take a close look at how investments in this area are affected. Chances are that real estate will continue to be the working stiff's best bet for small-time tax sheltering. Depreciation schedules are doubtless going to be reworked, probably to our detriment; but the shelter will still be there. And all expenses of having a rental property of some kind will most likely still be deductible. You owe it to yourself to know something about it.

Capital gains. Remember that capital gains (that is, profits on the sale of property, machinery or equipment, stocks and bonds, gold, jewelry, etc.) has always been a good way to do well by yourself while avoiding a big tax bite. It will continue to be so, and it even gets a slight (2.5 percent) additional break under the Reagan tax plan.

Family fun. Since everyone seems to be jumping on Reagan's "family-oriented" tax bandwagon, consider falling in love, getting married, and having children. No joke. The new tax code may actually make it worthwhile for good friends, who otherwise prefer to remain single, to get married in order to save cash. Shades of the people who used to get *divorced* every year to save taxes, as a result of the *anti*-family tax laws!

Of course, the "basic" advice given above is the most important: if you don't know what's *in* the new tax law, you can't adjust your actions to effectively save yourself money. If you *do* take the time and effort to educate yourself, then everyone benefits. After all, withholding tax dollars from government never hurt anyone.

Tim Condon is an attorney and tax specialist practicing in Florida.

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By Kelly G. Ross

Lawyer for The Little Guy

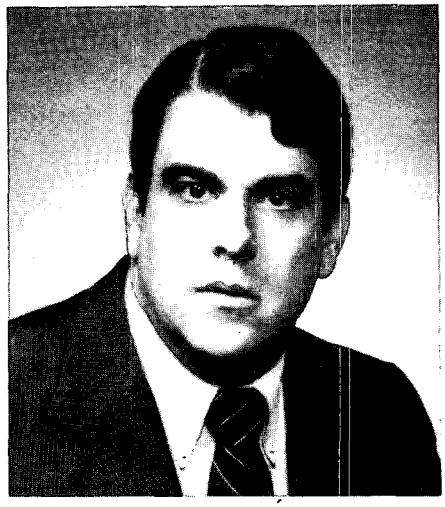
Dan Popeo was following the path hoped for by many of his fellow Georgetown Law School graduates: a position on the legal staff in the Nixon White House, a brief stint in the US attorney general's office, and a job as a trial attorney at the Department of Interior. The next logical step was a lucrative offer from one of the capital's distinguished law firms.

But Popeo, the son of a working-class family, was offended by his cases at Interior. Handed the responsibility for enforcing health and safety regulations often capricious and petty in nature, he found that his opponents in court were often struggling entrepreneurs. The last straw, Popeo related in a recent interview, was when he found himself seeking a court injunction to "close down a one-man mine operation because the owner didn't have a two-way radio to talk to himself, or a stretcher to carry himself out of the mine if injured."

So instead of moving up to a plush office on Pennsylvania Avenue with an extensive law library and legions of support staff, Popeo in 1976 borrowed $15,000 to establish the nonprofit Washington Legal Foundation. His quarters: a $100-a-month cubicle with $100 worth of office furniture. His only law library was across town at his alma mater, and Popeo's wife served as secretary, typing briefs at home in the evenings.

Today, the Washington Legal Foundation is one of the country's largest nonprofit public-interest law centers. Its latest annual report cites over 200,000 members and supporters nationwide. Ensconced in their own four-story renovated townhouse in one of Washington's fashionable areas, the foundation's 13-member staff has gained national recognition for work in the courts, regulatory agencies, and public-policy arena.

Once the sole province of the liberal left, "public-interest law" is now practiced by a score of conservative and libertarian organizations across the nation. "Groups like the Washington Legal Foundation," says Popeo, "have every intention of using the courts for free enterprise, for a free market, and for a limited government in all the ways, with all the methods, that the ACLU, Ralph Nader, and the NAACP Legal Defense Fund have used the courts for years."



Dan Popeo

Several of the foundation's most-publicized cases in defense of freedom have involved a party usually absent from American courtrooms—the Soviet government. Popeo's group first challenged the Russians in 1983 when they defended the right of the city of Glen Cove, New York, to bar vacationing Soviet diplomatic staff from municipal recreation facilities. The city, which contended that most of those involved were in fact KGB agents, was ultimately unsuccessful in its effort, but the dispute was featured in a segment of *60 Minutes*.

A year later, the foundation filed a complaint in the US Court of International Trade seeking to enforce a 1930 law that bars the importation of goods made by slave or forced labor. The action was prompted by a CIA report that some three dozen products imported from the Soviet Union fall into such a category. A move to implement the required ban by the US Customs Service was blocked by Treasury Secretary Donald Regan.

The complaint is still pending, as is the foundation's defense of Vanna Om Strinko, a Cambodian refugee who is being prosecuted for her peaceful protest in front of the Soviet embassy in Washington. Unlike the nearly 2,000 people who have been arrested since November 1984 for breaking the same law in front of the South African embassy but whose charges are routinely dropped, the diminutive Mrs. Strinko—now an American citizen—faces a maximum possible penalty of 60 days in jail and a $100 fine.

Popeo is angered by the double standard often evident among liberals. "You don't see the do-gooders and so-called human rights activists arguing against slave-made goods, or the ACLU running to the defense of Mrs. Strinko," he says in exasperation.

His organization and others like it, says Popeo, are engaged in "a war of legal ideas and a dispute over how to govern." On the other side, he sees activists who use the courts "to pursue radical social and political agendas that they couldn't possibly accomplish at the ballot box." Counters Popeo: "I don't think anybody ever wanted the US district judges to become America's modern-day Founding Fathers, rewriting our Constitution in the courts."

On the same side as the courts in this "war of legal ideas" is the government-funded Legal Services Corporation ("all the money they've used to pursue their own radical agenda could have been used for legal services for the poor"). Then there are all the "so-called public-interest spokesmen, who over the years have built up the role of government in making sure that business profits don't get too big—because the bigger a business, 'obviously' there's corruption or exploitation of the worker going on."

But he concedes that citizens and voters themselves bear some of the blame for government's intrusiveness in their lives. "The American people," he charges, "have been turned into the biggest bunch of babies! Every time something goes wrong, the first thing they do is look to the government for a solution or an answer."

But even after such serious rumination, Popeo can't help but lean back and, with a wide grin, exclaim, "But I'm having a hell of a lot of fun!"

Kelly Ross is the director of public affairs of the Reason Foundation.

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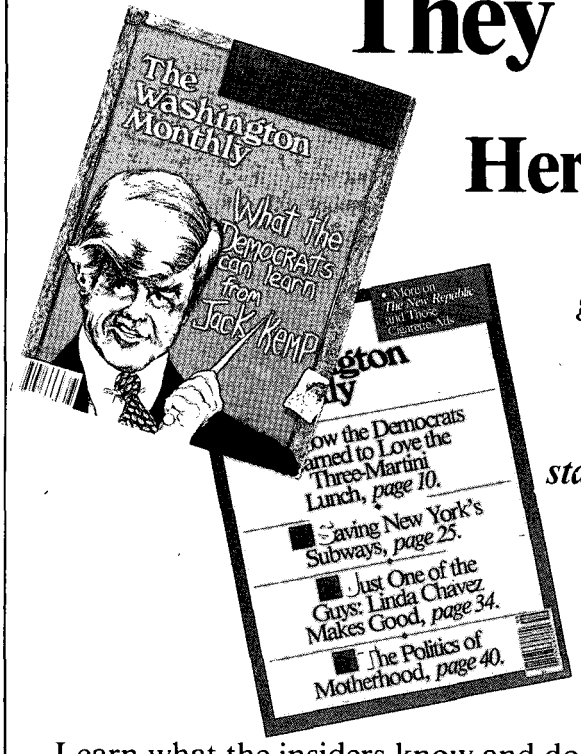
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RE 95

The Big, Bad B Movies

By John Ahrens

Movies, claimed D. W. Griffith, would make war literally impossible. They would present such a compelling picture of the true brotherhood of man, argued this pioneer American filmmaker, that even the most untutored provincial could not fail to grasp its meaning.

Well,...maybe. It was in 1924 that Griffith made this optimistic prediction about the social impact of movies, and he didn't expect it to be realized in less than a century. But if he was right, a lot of contemporary film-makers are going to be looking for a new line of work. For there just doesn't seem to be much peace, love, and brotherhood in the movies, especially the "B movies" that are cranked out by the dozens every year.

Last year at Christmastime, mothers across the nation voiced complaints about TV ads for one of them, *Silent Night, Deadly Night*; it seems that their children were frightened by a fellow in a Santa suit who comes with an axe to punish bad children. Brian De Palma's recent Hitchcock thriller, *Body Double*, provoked the usual outrage among feminists; they are troubled by a movie in which the hero is a peeping Tom, a young woman is murdered with a very large power drill, and the clue to the killer's identity is found in a sleazy porn flick. And *Terminator*, which featured Arnold Schwarzenegger in 90 minutes of totally gratuitous mayhem, led the pack in box office receipts.

Of course, violence, sadism, and sexual perversion are not the only themes that characterize B movies. But it is the horror and science fiction movies—those populated by monsters, mutants, weird aliens, sex-crazed slashers—that generate the most outrage. Since the very first child had a nightmare after seeing *Frankenstein* at the matinee, the defenders of decency and good taste have condemned Hollywood for pandering to our basest instincts. And Hollywood has been forced to shoulder a good deal of the blame for violence, promiscuity, drug abuse, simple-mindedness, and other ills that beset society.

This is the simple explanation for the popularity of B movies, and the simple critique. But it just won't wash. B movies certainly aren't art, and they seldom present a very uplifting picture of human existence. But the history of B movies suggests that they provide audiences with something much more substantial than cheap thrills and that they are much more a symptom than a cause of the ills of society.

The B movies got their start in the 1930s, the depression era, when Hollywood had to tighten its belt along with the rest of the country. Producers discovered that there are many ways to save money on movies and still attract a sizable audience: reliance on formulas saves money on script development, actors need not be stars or even competent, and formula plots don't usually require expensive sets or locations. A genre film—Western, science fiction, horror, detective—can therefore be cheap to make and will usually attract a sizable audience simply because people know in advance what to expect.

Film genres are by and large the same as literary genres, and most of them have been around since the beginning of the movies. But in film, as in literature, genres evolve. And, not surprisingly, this evolution parallels changes in the worldview of B-movie audiences.

The typical horror and science fiction movies of the '30s and '40s drew extensively on the supernatural: vampires and werewolves were popular, as were other "unnatural" creatures like King Kong or Frankenstein's monster. But the evil depicted in these movies was of a thoroughly natural sort. Someone was overcome by uncontrollable impulses, to drink blood or to bay at the moon and consume raw flesh. Or someone meddled with forces that human beings were not meant to understand and control.

That such stories should be popular in the Western world is no surprise. Western culture has always exhibited an interest in subjecting "evil" human nature to the domination of reason and society and an insistence that there are strict limits to what it is right and proper for human beings to know or to attempt. In short, we have always been afraid of ourselves and of what we might do if we ever lose control and give in to our natural impulses.

This fear is not without justification, and this is what gives the horror and science fiction movies of the '30s and '40s, as well as the endless cycle of sequels, remakes, and updated versions, their continuing appeal. When nature overcomes reason, as in *The Wolfman* (1941), or when man probes too deeply into nature's secrets, as in *Frankenstein* (1931) or *The Invisible Man* (1933), there is never any doubt what the outcome will be. The audience knows what to expect, because viewers have been warned time and again by parents, teachers, and preachers.

By the 1950s, American audiences had found something to fear even more than themselves—the Red menace and the spectre of nuclear annihilation. This was the age of paranoia, of subversion from within and without, of the House Un-American Activities Committee. And the horror and science fiction movies of the '50s reflected this paranoia.

The B movies of the 1950s are typified by *I Married a Monster from Outer Space* (1958). This movie's plot is a paradigm of implausibility: Aliens from a species whose females have all perished come to Earth and take the form of men so that they can breed with human women. A naive young bride discovers this nefarious plot, but no one will heed her hysterical warnings because, of course, the aliens look "just like us."

The subtext, however, is considerably more plausible. Communist infiltrators look just like us: your new neighbor could be one, or your coworker or even your child's teacher. In the 1950s, evil was no longer identifiable by its appearance. To the hideous face of Dr. Frankenstein's monster and the obvious decay of Dracula's castle had been added the comfortable familiarity of *The Thing* (1951) and the human puppets of *Invaders from Mars* (1951). But evil is no less threatening for being pleasant to look at, and the message of these movies was clear: we must heed the warnings of those who know, and present a united front against threats to our way of life.

The '50s also saw the emergence of nuclear annihilation as an important theme in B movies. More often than not, it was some side effect of radiation, rather than nuclear war itself, that threatened the survival of the human race. The familiar character in *Godzilla, King of the Monsters* (1954), the giant ants of *Them!* (1954), and the creatures in *Attack of the Crab Monsters* (1957) are all a product of radiation. Fear of Communist subversion was no greater than fear of the steps our very own scientists and military leaders were taking to defend us.

By the mid-1960s an increasing number of people believed that evil is a product not of human nature but, rather, of the artifices and constraints of society. The antihero became a stock character in the B movies of the '60s and early '70s. These movies reflected a naively utopian worldview: the goodness and decency inherent in human nature is repressed and corrupted by social institutions that demand conformity to "arbitrary" rules and standards.

The best of these movies—*Easy Rider* (1969) or *Vanishing Point* (1971)—evoked a terrible sense of futility and suggested that the only way to escape the status quo is a noble act of self-destruction. But movies like *The Trip* (1967), *Wild in the Streets* (1968), and a decade of biker movies did little more than sensationalize the sexual and moral corruption that lurked just beneath the surface of rebellion. As is usually the case, there was something for everyone in the B movies of the '60s: something for those who identified with the rebels and something for those who saw in rebellion the imminent collapse of the American way of life.

Then, in 1974, Tobe Hooper gifted the world with *The Texas Chainsaw Massacre.* This movie, despite the fact that it treats violence rather tastefully by contemporary standards, is notorious, and rightly so. It has become the model for the B horror and science fiction movies of the last decade. Evil is faceless in Hooper's movie: the killer is never seen without his crude mask of leather (human skin?). It is unstoppable: the teen-aged victims are no match for a psychotic with a chainsaw. And, perhaps most telling, it demands the sacrifice of innocents: one need commit no sin to suffer horrible mutilation and death at the hands of a stranger.

The elements of Hooper's movie occur again and again in the horror and science fiction movies of the last decade. In John Carpenter's *Halloween* (1978), in *Friday the 13th* (1980), in *The Fog* (1980), the story is always the same. Ordinary people are menaced by a faceless threat and can do nothing, either alone or together, to stop it. And one can be sure that there will be many innocent victims before the evil is bested or, more likely, simply disappears as mysteriously as it came.

Contemporary B movies are extremely nihilistic, and it is hard to believe that this is anything but a reflection of the worldview of the people who go to see these movies. The modern world is rife with dangers against which the individual is likely to feel helpless—nuclear war, pollution, terrorism. Indeed, many people doubt that even a concerted effort by the whole of society can do much to meet these threats. Small wonder, then, that people identify with the helpless victims in contemporary horror and science fiction movies.

And this attraction belies the view that B movies offer nothing but cheap thrills or that they merely pander to our baser

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instincts. These movies are entirely too unsettling and stir up fears that are entirely too real and pressing. They do not often challenge our intellectual, moral, and aesthetic preconceptions in the way that the best films can. They may not even be made with any imagination and attention to detail, although the best of them are. But this does not mean that they must be superficial or base, that audiences are looking for nothing more than cheap thrills or a validation of their own worst impulses.

Novelist-philosopher Ayn Rand, in *The Romantic Manifesto*, defined art as the "selective re-creation of reality according to an artist's metaphysical value-judgments." In other words, the artist selects certain features of reality and integrates them in a projection of how the world might be. B movies are certainly a "selective re-creation of reality"; there is a great deal more in the world than the violence and sadism of horror and science fiction movies, the mindless hedonism of teen-age sex comedies, the simple dichotomies of Westerns. But it is not the *artist's* projection of how reality is or might be. It is the *audience's*. B movies offer their audiences a stock of symbols and metaphors that represent a worldview already held. And, in so doing, there is little doubt that they provide a kind of validation of this worldview.

B movies are a wonderful example of the market at work: they give the customer exactly what he wants, and they do it cheaply, too. And the critics of the market, as they do with so many consumer products, put the worst possible interpretation on the popularity of B movies. Does the public want violence and sadism, mindless hedonism, and simple answers? The explanation must be that they are insensitive to the sufferings of their fellow human beings. They are too apathetic to grapple with complex intellectual and moral issues. They want vicarious enjoyment of the base and perverted things they are afraid to do themselves. And, of course, Hollywood just intensifies the problem by pandering to the demands of the public.

Maybe. But maybe audiences want to desensitize themselves to violence and meaningless pursuit of pleasures so that they can cope with these things in their own lives. Maybe they are disillusioned by high-minded rhetoric and ineffectual posturing and long for a time when simple answers produced immediate and direct action. Maybe they want to confront their worst fears and impulses and know that they can walk away unscathed.

One thing is certain: the fears of "serious" critics would make an excellent B movie. *Attack of the Lowbrows* (1985): Undead theater patrons infiltrate the board of the National Endowment for the Arts and divert millions of tax dollars to chainsaw manufacturers; survivors realize that all men are brothers under the skin.

John Ahrens is the assistant director of the Social Philosophy and Policy Center, in Bowling Green, Ohio. His views on movies do not reflect those of the Center or of persons of discriminating taste.

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Marxism Demystified

By Tibor R. Machan

Marxism: Philosophy and Economics, by Thomas Sowell
New York: William Morrow, 281 pp., $15.95

If you have wanted to learn about Marxism but didn't know where to begin, your problem has been solved. Thomas Sowell, a senior fellow at the Hoover Institution and one of the best free-market economists in our time, has come to your assistance.

Sowell's *Marxism* is a superb achievement, yet without the intimidation one may associate with a brilliant discussion of the thinking of Karl Marx. For one, Sowell writes so clearly that those familiar with Marx's own, often abstruse, works can only marvel at how this could be accomplished by even the most conscientious scholar. What is even more remarkable is that Sowell never compromises on scholarly accuracy or thoroughness.

In Sowell's own words, "The main purpose of this book is interpretation." There is only one final chapter devoted to criticism, to which I will return shortly. For anyone who has been studying Marxism for a while, it should come as a great piece of news that there is now a book that simply wishes to get Marx straight.

While Sowell is a prominent free-market economist now, this will not serve those who would therefore dismiss his work on Marx: Sowell was himself, at one time, a devotee of Marx. He has written scholarly pieces on Marxism, including one for the *Canadian Journal of Economics* in 1967, on the occasion of the 100th anniversary of the publication of Marx's *Das Kapital.* As Sowell notes in his preface to *Marxism*: "What is gratifying is to be able to read back over these earlier efforts and see how little difference my own changing viewpoints have made in the purely interpretative analysis." Additional testimony comes from the fact that his essays on Marx can be found in anthologies on Marxism—edited by Marxists.

It is difficult to lay out Marxism in 200-plus pages, but Sowell succeeds. I can only indicate how by considering some of the tasks he accomplishes in the process, some especially noteworthy for proponents of individual freedom.

For one, Sowell disabuses us of a few myths that free-market economists have promulgated about the flaws of Marxism. If there is one thing that those who wish to defend the free society should never do, it is to underestimate or trivialize the Marxist critique of the capitalist system or to underrate Marx's own theoretical apparatus.

The well-known "labor theory of value" is a case in point. In this connection Sowell observes, "Nowhere have earlier and later theories been read into Marx with more disastrous effects on accuracy. . . . Marx did not have a *theory* of value, but rather what he himself repeatedly referred to as a 'definition' or 'concept' of value."

Many free-market economists come to their understanding of Marx's ideas about value and about exploitation of labor via the work of Eugen von Böhm-Bawerk, one of the first members of the Austrian School of economics. But by Sowell's account, their understanding is thus skewed, despite the merits of Böhm-Bawerk's economic thinking.

Another well-known mistake about Marx is that he believed workers would become poorer as capitalism advances. This "immiseration thesis" is often attributed to Marx. Marx is partly to blame for the misinterpretation—as he is for many others—because of his convoluted writing and because it is difficult to distinguish the political rhetoric of Marx from his serious theorizing. What he actually argued in this case, however, was that the gap between capitalists' and workers' standards of living would increase as capitalism develops, a claim that is quite compatible with the improvement of the worker's absolute level of income.

In addition to interpreting Marx's theoretical works, Sowell also fills the reader in on Marx's life. Everyone by now must have heard that Marx was by no means a prince of a fellow. He was conceited and priggish, could not manage his family's finances, and though receiving a comfortable income from

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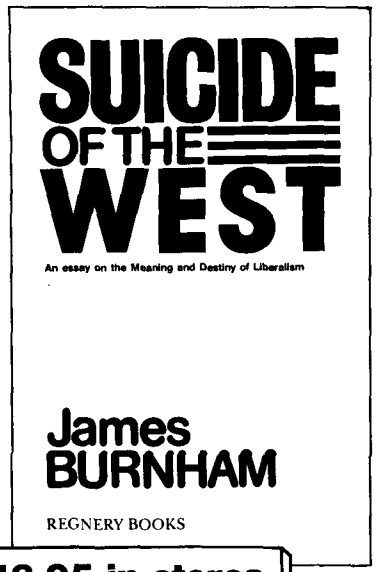

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supporters and his journalistic work, lived in virtual squalor (which may have led to the death of three of his children). As Sowell tells us, "The death of his infant son he blamed on 'bourgeois misery,' which he apparently considered also the cause of the boils that covered his body, for he promised to make the bourgeoisie pay for them via his revolutionary writings."

All this Sowell tells with a deftness that abstains from explicit moralizing but leaves us able to draw our own moral conclusions. For example, he writes that "in 1852 [Marx] referred to some 'good news'—the illness of 'my wife's indestructible uncle'—and added: 'If that dog dies now I'll be out of trouble' financially."

Yet Sowell cautions us not to condemn Marx for sins of which he was not guilty, such as fanatic racism and bigotry. Marx's criticism of Jews, he argues, is a complicated matter, not comparable to that of the Nazis. Sowell here disagrees with such Marxist scholars as George Watson, who claim that Hitler actually learned much from Marx that led him to his anti-Semitic terrorism.

It seems to me that at times Sowell is a bit too charitable toward Marx, who in his letters to Engels praised the clearly racialist anthropolitical theories of the French biologist Pierre Tremaux. Tremaux argued that the soil in which food is grown determines the character, morals, and culture of the person eating the food. Marx, as a result, maintained that Tremaux's book "in its historical and political application is much more important. . .than Darwin." This implies a form of racism and ethnocentrism that many contemporary Marxists denounce—for example, in connection with the debate about the validity of intelligence tests.

Sowell's criticism of Marxism is brief and to the point. It is worth the price of the book, especially for those who believe in the quick dismissal of such ideas as Marx's exploitation theory (in which Marx argues that the bourgeoisie, presumed to own all property, or capital, is able thereby to exploit workers by hiring them at wages that don't reflect the value that their work creates). "Vulnerable as Marx's exploitation theory was," writes Sowell, "part of the marginalist economists' criticism of it missed the mark, for the marginalists argued in terms of the respective contributions and rewards of factor inputs [labor, capital, etc.], rather than of people as such."

The only thing I would wish to add to Sowell's assessment of Marxism is that the conception of human nature that Marx entertained throughout his life leads to almost all the major horrors associated with Marxism in history. To Marx, "The human essence is the collectivity of man." Once this is accepted, all the purges, liquidations, and so on, come easy to those who wish to usher in humanity's glorious emancipation. It is crucial to understanding Marx.

One thing those who wish to defend the free society should never do is to underestimate or trivialize the Marxist critique of the capitalist system.

Yet almost every other body of thought in the West has preached something similar, if not identical. The doctrine of the brotherhood of man; the idea that every one of us really is part of some monolithic family, perhaps "the family of God"; or that we are all the parts of the great earth cell, come to no less than Marx's idea that humankind is an "organic whole." And just as the whole may sacrifice some of its parts for its own health, so humanity may sacrifice some of its individual parts—you or me or the kulaks or the capitalists—for the sake of its ultimate health. This, perhaps more than anything else, has given Marxism its intellectual force—it made an old, mystical idea compatible with at least the appearance of modern science.

Sowell has written a very satisfying book. Among the innumerable tracts about Marx, it stands out as a very clear and diligently accurate one. It is a pleasure to read. And it does not play merely to the gallery of rooters for the free society.

Tibor R. Machan will be teaching philosophy this year at Franklin College, in Lugano, Switzerland.

Good Government Means Less Government

By Stuart M. Butler

More: The Rediscovery of American Common Sense, by Raymond Q. Armington and William D. Ellis, Chicago: Regnery Gateway, 233 pp., $12.95 paper

This Way Up, edited by Raymond Q. Armington and William D. Ellis Chicago: Regnery Gateway, 163 pp., $6.95 paper

The battle for the free society must be fought on many fronts and with many weapons. A pair of books, *More* and *This Way Up*, are important additions to the arsenal. Raymond Armington and William Ellis have produced two benignly insidious volumes that contrast the realities of the marketplace and the bureaucratic state in the common language of practical people—those saner members of society who have better things to do than study formal economics.

Nobel Prize–winning economist Milton Friedman's many popular works discuss economic theory in persuasive, everyday language. In *More*, Armington and Ellis take a slightly different approach. They use anecdotes and newspaper clips, interspersed with pithy quotations from the likes of Revolutionary War essayist Thomas Paine or Abraham Lincoln, to drive home fundamental political and economic truths. Then they give their readers down-to-earth ideas for straightening out the dangerous mess they believe America to be in.

Recalling the words of labor leader Samuel Gompers, the authors remind us that "the objective of labor is . . .more!" Their book charts out a route to enable Americans to make more money and to keep more of it. In their very first chapter, Armington and Ellis make the critically important point that economic

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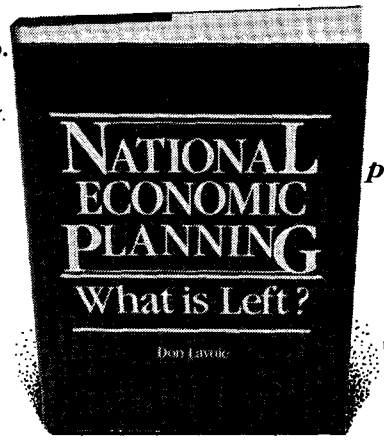

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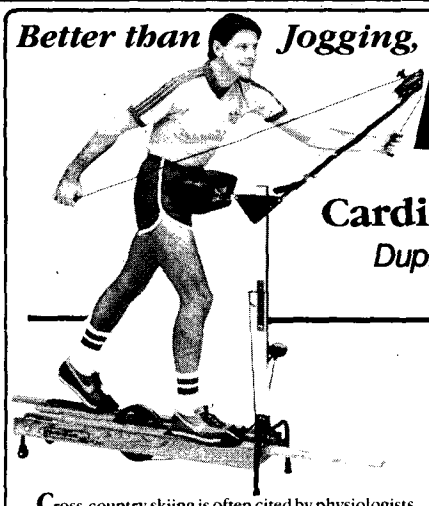

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improvement requires economic freedom, and that economic freedom is contingent upon political freedom. In case their practical audience believes that achieving political freedom means electing "our" people to positions of authority so that they will dismantle the state, the reader is reminded of Evans's Law of Politics (after journalist M. Stanton Evans): "After our people get to the point where they can do us some good, they stop being our people."

The road to more is not good government but less government. So the authors tell us to fight government bureaucracy always and everywhere and to limit government by supporting every sunset law that would dismantle government agencies after a specific period of time. They tell us to put officials on the defensive by backing every movement to overhaul the civil service and to keep our political chastity by refusing all government "help"—noting the conclusion of Alexis de Tocqueville, the French 19th-century writer on democracy in America, who remarked that the American republic "will endure until its politicians learn that its people can be bribed with their own money."

Armington and Ellis go on to explain that progress and improvement can only be achieved by reducing government control and intervention and by utilizing the democratic power of the free economy. Government, they note, does not create jobs for unskilled blacks by pricing them out of the market with minimum-wage laws. Nor does it end poverty and dependency by constructing a welfare state. And it does not provide security for the nation's elderly by forcing people to join a fraudulent state retirement system that would land its architects in the slammer if they tried to peddle it in the private sector.

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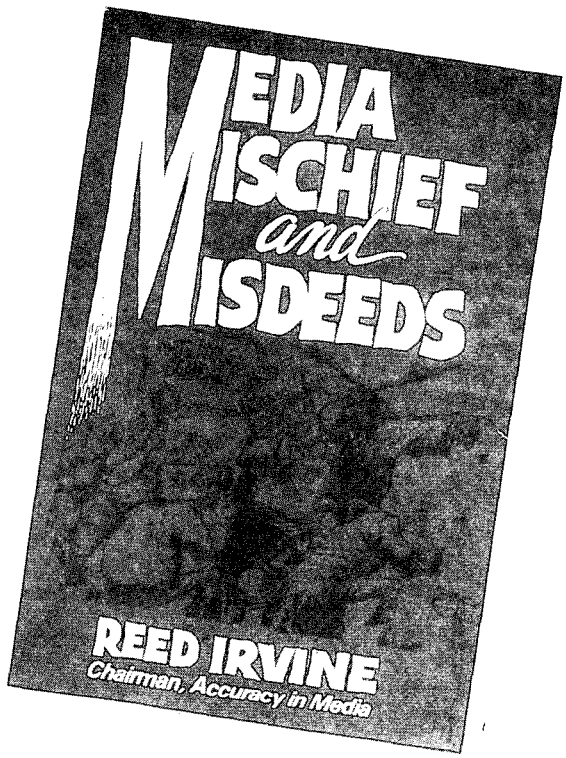

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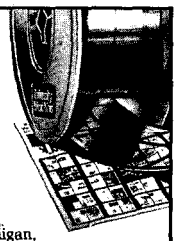

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More is an ideal book for the small businessman who is frustrated by red tape, the farmer who works harder and gets poorer, or the auto worker who goes into shock when he sees how much in taxes has been taken out of his paycheck. *More* won't just tell each of them why the country got into its current situation—it will tell them what to do about it.

This Way Up takes the general themes of *More* and turns them into a handbook for local officials who want to revitalize their communities. Its message: draw on the power of the private sector by contracting out or privatizing local services. Privatization is a custom-made vehicle, write Armington and Ellis in the introduction, for such people as the municipal problem-solver, the young reformer, the mayor who is sick of strings-attached grants from Washington, and the candidate seeking the dream platform of lower taxes with better services. Privatization enables costs to be cut because it "puts into your hand the ancient power and efficiency of the ability to shop around."

The book brings together a group of experts who put together action plans for privatizing a number of basic local services: mass transit, public housing, fire protection, garbage collection, hospital care, wastewater treatment, and day care. As the editors emphasize, "The chapters are not philosophical tracts, but working manuals on how to proceed with specific privatization." *This Way Up* is complete with draft forms to solicit bids (just fill in the blanks), step-by-step evaluation procedures to break down the cost of services, and hard-nosed case studies to let officials learn from the successes—and the failures—of others.

Yet *This Way Up* is more than a "how-to" book. It is also an invaluable source of documentary evidence for anyone engaged in spreading the privatization gospel. There is plenty of meat here for op-eds in the *Wall Street Journal*, letters to the *Anytown Citizen*, or speeches from the stump. REASON's editor, Robert Poole, for example, gives a detailed, but highly readable, survey of the economics of mass transit, drawing on a wealth of evidence from this country and abroad to demonstrate that the "real hope for improved transit lies with introducing decentralized, flexible, private transportation alternatives." Lou Witzeman, the pioneer of private fire protection, gives the reader an excellent history of private fire departments and a comprehensive cost analysis of private versus public delivery. Nancy Peterson, editorial director of *Waste Age*, provides a wealth of information on the economics and management practices of America's 10,000 waste-handling companies.

This Way Up joins E. S. Savas's *Privatizing the Public Sector*, Robert Poole's *Cutting Back City Hall*, and many articles in the growing literature on privatization. Moving "government functions" into the private sector is no longer an abstract concept. Each successful example persuades more officials and voters who rely on practice rather than theory. *This Way Up*, by combining extensive documentation of existing privatization with a handbook for local officials wishing to adopt the strategy, will add new momentum to the privatization campaign.

Stuart Butler, director of Domestic Policy Studies at the Heritage Foundation, is the author of Privatizing Federal Spending *(Universe Books, 1985).*

The Bitter Battle over Energy

By Dale Gieringer

Dynamos and Virgins, by David Roe
New York: Random House, 218 pp., $18.95

It is possible to forget that there once raged a bitter battle over energy and electric-power-plant construction. In the wake of the energy crisis, so-called advocates of growth urged the need for vastly expanded electrical production and a crash program of nuclear construction. On the other side, environmentalists argued for conservation, efficiency improvements, and "soft," small-scale, renewable technologies instead.

Among the latter was a young lawyer named David Roe, who has written a book about how he and a handful of friends at the Environmental Defense Fund (EDF) succeeded in largely reshaping utility planning in California. Ironically, Roe is himself the great-grandson of George Roe, founder of the Pacific Gas and Electric Company (PG&E), whose bat-

tle with EDF over expansion plans is the major story of *Dynamos and Virgins.* At stake was an ambitious expansion program that PG&E proposed by way of justifying rate hikes before the California Public Utilities Commission (PUC). Overall, PG&E planners envisaged spending $13 billion for new construction over the decade 1975–84, including five new nuclear plants. These projections were well in line with the growth-oriented forecasts typical at the time, which generally assumed a continual exponential growth in electricity-generating capacity.

It therefore came as a shock to conventional sensibility when a number of upstart young environmentalists claimed that these numbers were completely overblown and that electrical needs could be met more cheaply with *no central plant expansion at all* through improved efficiency, conservation, and small-scale renewable technologies. Among the first to argue this case in public were Roe and the EDF at hearings before the California PUC. They drew heavily on the work of a young economist named Zach Willey, whose analysis showed that PG&E could make a better return on investment if it bought conservation improvements for its customers than if it built new central power plants—a radical notion to the electric-utility industry.

Radical or not, EDF's analysis turned out to be largely on target. The extent of EDF's victory can be judged by the fact that it eventually persuaded not only the California PUC but many utilities, as well. In the end, PG&E withdrew all of its plans for proposed coal and nuclear plants, investing instead in conservation, "load" management, geothermal energy, cogeneration, and the like. The significance of EDF's victory is all the more apparent in light of the construction bust that has subsequently swept the utilities industry, notably the Washington Public Power Supply System (WPPSS) fiasco, in which bondholders have lost billions of dollars invested in canceled nuclear plants. What is unclear is how long the present hiatus in new plant construction will continue and how much of it is due to purely economic factors as opposed to political and regulatory obstacles in plant siting and design.

From today's perspective, it is easy to forget the atmosphere of polarization that characterized the debate between environmentalists and proponents of growth. Radical environmental groups such as Friends of the Earth came forth with visions of a radically transformed

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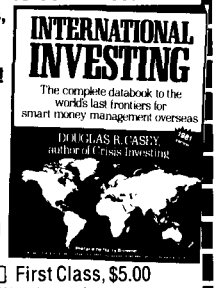
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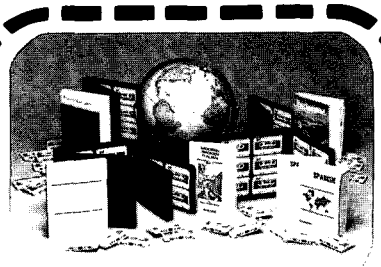

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America, forgoing automobiles and modern conveniences where necessary with a new, frugal lifestyle. On the other hand, proponents of growth cast themselves as embattled friends of capitalist free enterprise opposing a new class of "coercive utopians."

Critics of coercive utopianism may well be put off by Roe's background: a lawyer working out of Berkeley with unabashed countercultural sympathies, who relishes the appearance of subversiveness. The author's goals are scarcely modest, as he describes how EDF set out with aims no less ambitious than those of his great-grandfather, to effect "as radical a rearrangement of society's investments as the one that had followed the concept of central dynamo-stations in the first place." Roe goes on to note that unlike his entrepreneurial forebear, he would rely on legal briefs, witnesses, and computers instead of capital to advance his ideas.

Yet however much we may mistrust the legal profession, the point can rightly be made that legal weapons were a legitimate means of challenging PG&E given that it was a legal monopoly under public regulation. Roe makes a strong case that PG&E, like many public agencies, had grown into an essentially conservative and cumbersome bureaucracy, the planning efforts of which were woefully inadequate (Roe recounts how an executive officer in charge of PG&E's planning proved unable to define the term *marginal cost* despite having used it in testimony). Without EDF's intervention—and without the sympathetic attitude of the administration of Gov. Jerry Brown, which, whatever its other faults, was often more cost-conscious than that of his predecessor, Ronald Reagan—it is quite likely that California utility customers would have ended up paying much higher rates.

A saving grace of *Dynamos and Virgins* is that the author takes pains to disassociate himself from environmentalist extremists, whose value-laden rhetoric he appears to regard as distasteful. Rather, Roe emphasizes that EDF wished to make its case entirely in economic terms—a strategy pioneered by EDF. In this spirit, he explicitly rejects the anti-nuclear issue as irrelevant. He harbors no hostility towards big business, insisting that "EDF's most ambitious goal was not to bludgeon utilities into change with the clumsy weapons of regulation, but to win them over with the attractions of a new way of thought." Roe thus does much to dispel the stereotype of coercive utopianism.

Another virtue of *Dynamos and Virgins* is that it is well written. The author displays a novelist's talent for storytelling and a flair for salient detail in describing the personages and tactics of bureaucratic wrangling, the ploys of dress and personal style, and the art of computer-model testimony. Readers like myself may, however, be irritated by a touch of elitist Ivy League cockiness in the author's manner.

Roe harbors no hostility toward big business and thus does much to dispel the stereotype of environmentalists as coercive utopians.

More disturbing is Roe's admitted lack of technical or economic expertise, along with his unquestioned faith in Willey's econometric model, which he describes as "legerdemain" and "intellectual judo." Nowhere in his book does Roe explore the possibility that his adversaries might have been right on some points, or that the real reason for their capitulation might have been due less to economics than to politics; nor does he go into any of the dubious tax-subsidy schemes that California adopted to promote solar energy. This leads to the troubling question of how Roe knew that EDF was right in the first place. It is hardly reassuring that he writes, "Presumptuous as it would surely seem to anyone else, we took our factual superiority for granted." Unfortunately, this kind of attitude leaves one with little more confidence in the author than in the adversaries he bested; instead, it reminds one of earlier Ivy League whiz kids whose misadventures in Vietnam have been memorialized in the chronicles of "the best and the brightest."

Dale Gieringer has a doctorate in engineering-economic systems from Stanford University.

Trouncing the Trolls of Collectivism

By Edward Cline

Crossroads: The Great American Experiment, by Barry Asmus and Donald B. Billings, Lanham, Md.: University Press of America, 408 pp., $26.75/$14.25

An End to Allegiance: Individual Freedom and the New Politics, by Geoffrey Sampson, New York: Universe Books, 253 pp., $17.50

Two books have appeared recently that deserve the attention of anyone concerned with contemporary economic conditions. One is the pyrotechnical display of two angry American scholars; the other is a typically British observation of a political-economic phenomenon, not quite bemused, but not entirely disinterested either.

The first is *Crossroads: The Great American Experiment*, by E. Barry Asmus and Donald B. Billings, both teachers at Boise State University. It is a masterly survey of the political and economic progress of the United States from colonial times to the present. Its anger increases as the authors paint a picture of a still young country afflicted with the arthritis of statism.

The anger is understandable. And to a reader new to the subject of intellectual and economic history, little seems to have escaped the scrutiny of Asmus and Billings. But this same anger has led them to gloss over important episodes in that history. To put it another way, Part I, "The Rise of Individual Freedom and the Market Economy," is perhaps one of the most succinct recountings of the rise of Western liberal ideas ever written.

The centerpiece of this section is a thoroughgoing discussion of Adam

Smith and his seminal *Wealth of Nations*, published in 1776. But in the ensuing narration of the decline of the idea of freedom, no mention is made of a book published a mere five years later, *Critique of Pure Reason*, by Immanuel Kant, which was phenomenally more influential—not to say antithetical—in that it helped to make possible the very decline that Asmus and Billings understandably bewail.

True, a lengthy chapter on the complexities of Kant and his thought, and that of his successors, may not seem to have any relevance. Yet Kant, not Jefferson, is often called the foremost thinker of the very same Enlightenment that gave birth to the United States.

Part II, "The Decline and Fall of Personal and Economic Freedom," is as discouraging as Part I is enthusiastic. The authors narrate the abysmal record of retreat from those ideas in the intellectual, political, and business arenas. The reader gets a clear picture of how advocates of controls and the "public interest" exploited the patchwork of compromises that were built into the US Constitution.

As early as 1909, Herbert Croly, in *The Promise of American Life*, asserted that the "promise" could only be kept by the state actively intervening to promote a socialized political structure. The reader also encounters Alvin Hansen, a Harvard economist little known to the public but something of a legend in the frequently lightless alcoves of academe. It was Hansen who popularized the interventionist economics of John Maynard Keynes in the United States by translating the Cambridge don's thought and language into terms that Franklin D. Roosevelt's Brain Trusters and New Dealers could appreciate.

One of the most original sections of *Crossroads* portrays the typical modern politician as an entrepreneur who has fallen into the habit of counting voters, constituencies, taxpayers, and other people's wealth as his capital with which to acquire and retain a seat in the legislature, to further expand his powers, and to live the good life. Another perceptive section attacks those "friendly" politicians and bureaucrats who speak of free markets but vote consistently for constraint and regulation.

Asmus and Billings argue that freedom has lost its appeal chiefly because most people, over a period of time (but principally since the late 19th century), gradually accepted the notion that the state is the best guarantor of their economic and social well-being. Politicians neither invent nor promulgate these notions by themselves but, like most of us, receive them in school, where economic, political, and social doctrines "trickle down" from the academic endeavors of theoreticians and political philosophers far removed from most of us. The authors point out that among the many important reasons for the initial success of the American revolution—or the "great American experiment"—was the fact that most people in the colonial era were not indoctrinated as they are today but were at least minimally educated to function in a society whose paramount ethical vehicle was self-reliance and self-responsibility.

With ruthless editing, *Crossroads* could become the honors high school or college undergraduate textbook of tomorrow. Fully a quarter of the book could be cut without affecting its overall impact. Many sections are overwritten or redundant; others are not developed enough. Typographical and grammatical errors abound. There is much to admire about *Crossroads*, especially its ambition. This same ambition, however, overreaches itself and leaves one unsatisfied.

But its major inadequacy occurs in the discussion of the moral basis for capitalism. Here Asmus and Billings repeat the errors of Adam Smith and scores of other champions of freedom and the free market by repeating vaguely utilitarian assurances about the ultimate social usefulness of "enlightened" self-interest.

A conscientious liberal may concede any and all arguments concerning the benefits of freedom. But suppose he doesn't value freedom. Suppose he doesn't value free minds or free markets. Suppose his root concept of freedom is Orwellian in nature. "Freedom from fear," "freedom from want," and the like, are expressions of Roosevelt's and others' fundamental premises, predating Orwell's "Newspeak." Where did they come from? Who taught them? How were they formulated? Why were they so widely accepted? Any sound intellectual history requires philosophical detours.

While *Crossroads* attempts to pulverize the welfare state with what amounts to a sustained naval rocket barrage, *An End to Allegiance* confines its targets and takes better aim. In terms of scope, it's the difference between the epic television portrayal of World War II, *The World at War*, and *The Guns of*

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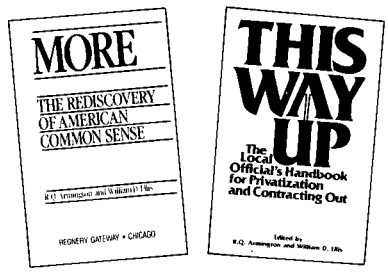
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the book case

Navarone. What Geoffrey Sampson, a professor of linguistics at the University of Leeds, sees, especially in Britain, is a radical turnaround in the intellectual status of government. He reports—with a barely contained intrigue that may draw in the skeptical—the gradual but measurable fading of the cult of state worship and a widespread disenchantment with state socialism as the panacea of first and only resort.

"Socialism won't wash with Britons any longer," writes Sampson. "We have our own lives to lead; we have outgrown allegiance." He announces the rediscovery in Britain that the "classes" are made up of individuals, not of delimited ciphers or immutable aggregations of customs, skills, and feelings. His book heralds a renaissance of individualism in Britain, not only among the educated middle classes, but among what were once known as the "working" classes.

Sampson delves into the nitty-gritty of statist attitudes. He is concerned with the mystique of government services and entities and with why they seem to be able to perpetuate themselves in spite of outrageous conduct and atrocious performance. There is the explanation that they are there simply by legislative mandate and protected by the expropriated moral force of law. But up until recently, the trolls of collectivism were immune from criticism, considered sacrosanct by the miasma of a sick but gripping philosophy—to wit, that society and all its "goods" ultimately originate from and ought to be arbitrated by the state.

Everybody once believed that. But no more. "Welfare benefits are bribes which help the State to maintain its power," writes Sampson of the growing consensus in Britain. "There is nothing 'compassionate' about giving away other people's money." Even more to the point, he concludes one chapter with the suggestion that "we must somehow deprive our rulers of the power to use law as a tool for bribing voters."

As might be expected, one of Sampson's targets is Britain's National Health Service (NHS). Sampson discusses the innumerable conundrums created by socialized medicine—such as the number of people who die each year while awaiting treatment of curable ailments, and the married couples fined by health authorities for choosing home deliveries of babies over hospital stays. "Anyone who hoped that the Welfare State would help to foster the dignity of Man must surely be depressed by the experience of visiting an NHS hospital as an out-patient," observes Sampson. "Amid the dreary decor, patients are moved from queue to queue like children too young to look after themselves."

The medical profession, writes Sampson, is a monopoly, "clothed in a mystique of professionalism." In Britain, most doctors are under the aegis of the

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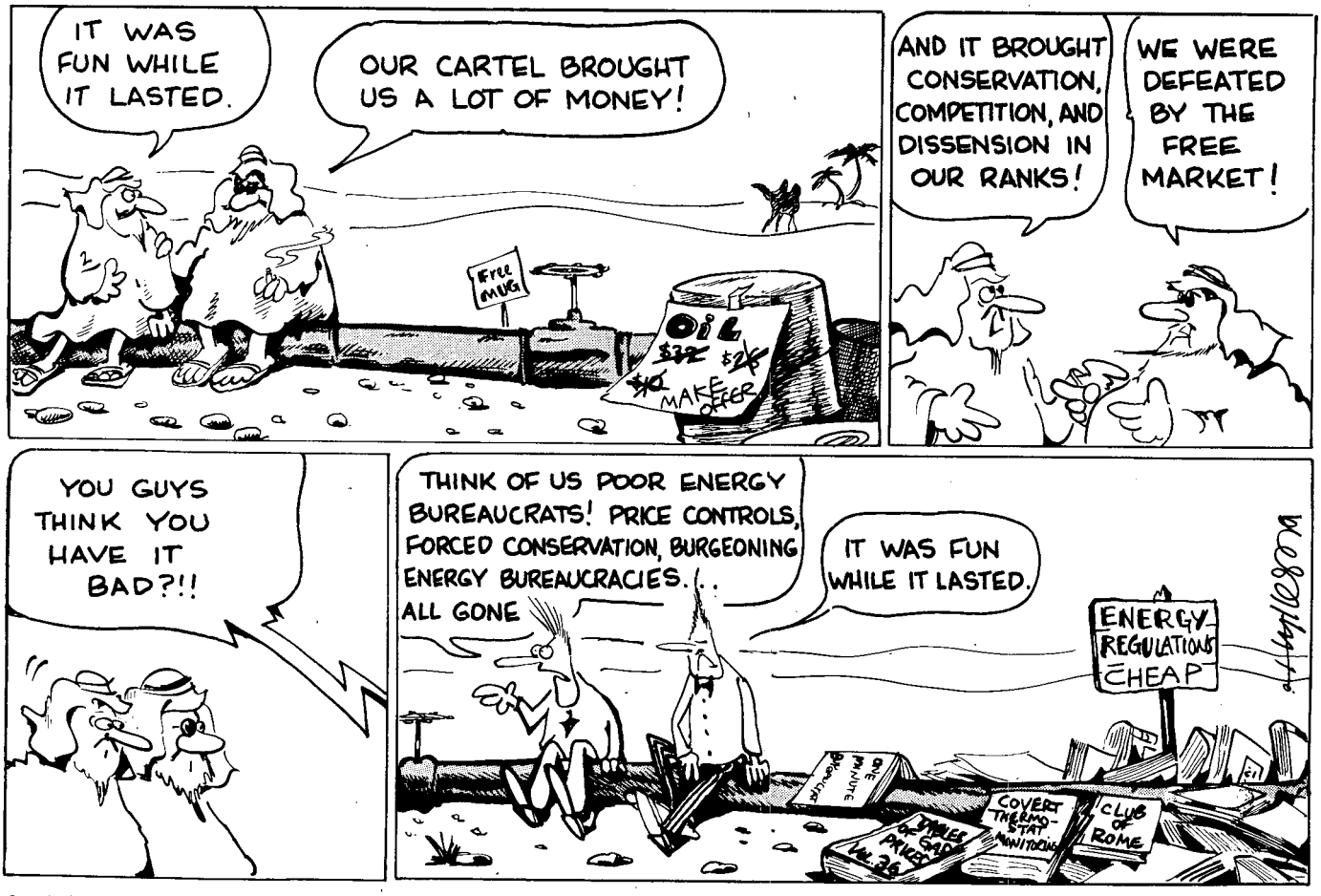
Randall K. Hylkema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NHS and are so overworked and manipulated that they respond in kind. There is no incentive to care about what they are doing. (Sampson, however, has stronger words for the American Medical Association (AMA), which he notes is a "powerful...cartel.")

Sampson's most acerbic words are reserved for the wilted knights of Inland Revenue, Britain's IRS. "Employees of the Inland Revenue tend to be grey, socially-inadequate personalities who in a decent society would be tactfully shunted away from positions giving them power over others." Income-tax collection drives sane people crazy and even to suicide over the arbitrary complexity and absurdity of tax regulations. Tax collection, writes Sampson, "distorts our lives and oppresses us in ways that have little to do with spending foregone....The collection of income tax has become an affair in which...citizens are stripped of their human dignity."

Although Sampson is at pains to lead skeptics to see the value of dismantling the welfare state, he doesn't buy all of what he calls the "liberal" position, an umbrella that covers "conservatives" and "libertarians." He casts a critical eye on the positions of libertarian thinkers Murray Rothbard, Robert Nozick, and Walter Block. And he explores the gaping holes in libertarian fringe arguments for completely stateless societies.

The welfare state, concludes Sampson, is a fraud, not only in substance but, more importantly, in intent and spirit. It is this latter half of his contention that is crucial. Perhaps there are too many books on how the welfare state does not meet its objectives. There are too few about why these objectives are naturally corrupt and corrupting. "A politics founded on economic theory," writes Sampson about the conservative-libertarian alliance, "implies a hopelessly blinkered, one-dimensional vision of the human condition."

Crossroads, because it has no philosophical center of gravity, is eloquent but unsatisfying. It raises more questions than it answers. *Allegiance*, although a much shorter book and of narrower subject, answers all the questions it asks. Its center of gravity is nothing less than the revival of self-esteem: Individuals who respect themselves balk at being treated like children.

Edward Cline is a staff member of the Institute for Humane Studies in Menlo Park, California.

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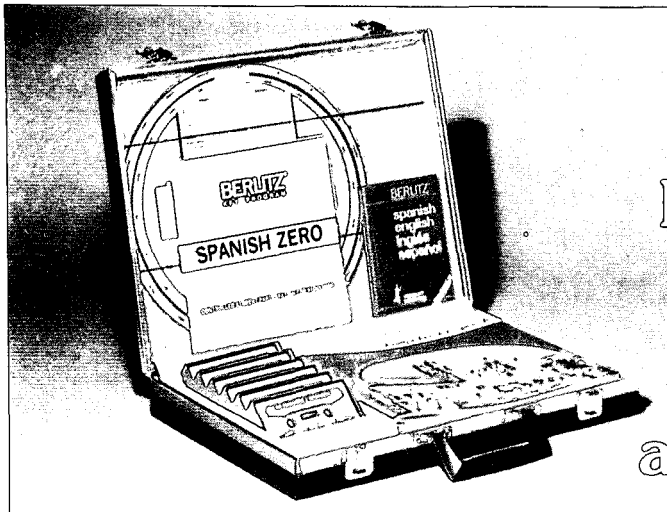

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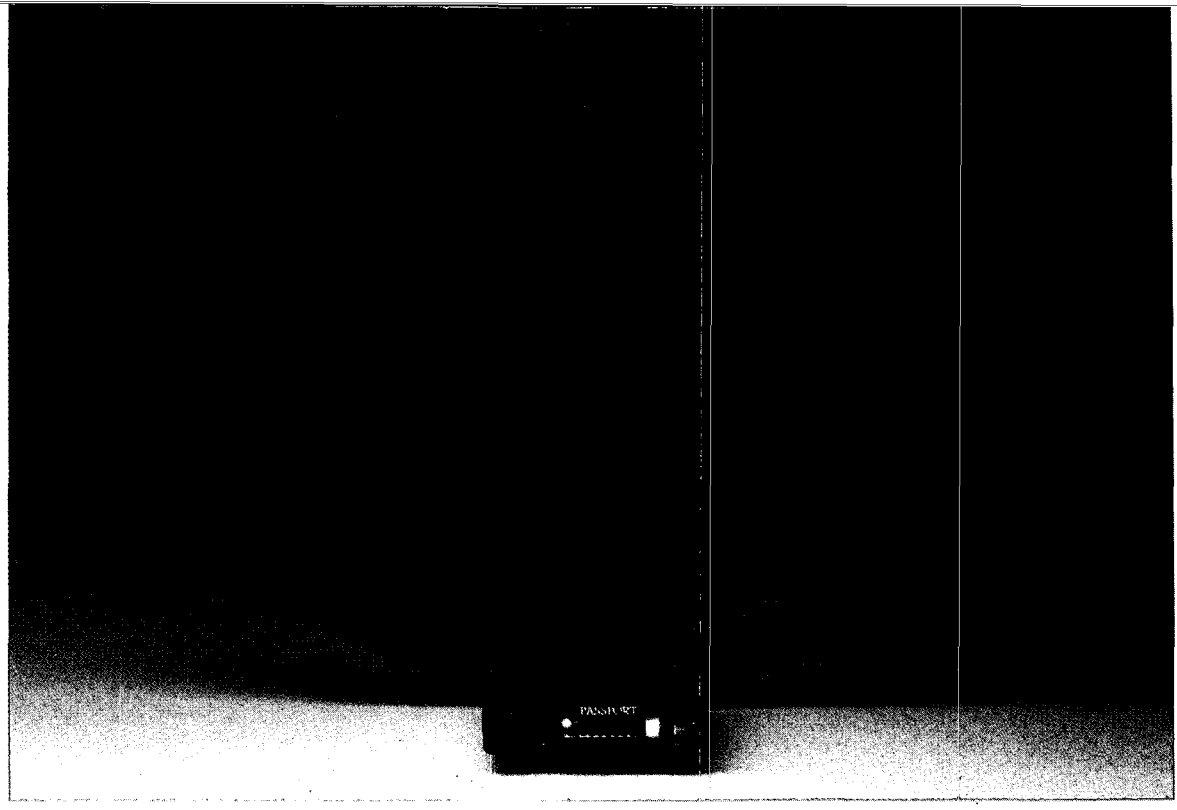

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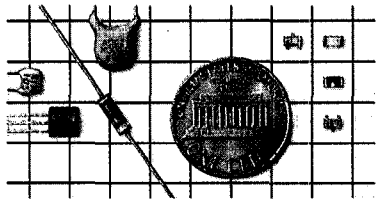

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